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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 23.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR PETITIONER.

CLARENCE E. WEISELL,
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Cleveland, Ohio,

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Dallas, Texas,
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INDEX.

Opinions Below 1

Jurisdiction 1

Statutes Involved 2

Statement of the Case 2

The Rules and Working Conditions Involved in this Controversy 5

Rule 1. The rule respecting the calling of a demoted engineer to perform service as an emergency engineer 5

Rule 2. The rules and practice governing the regulation of the working lists of engineers .. 7

Rule 3. Rule with respect to the method of filling vacancies in the engineers' pool at Smithville, Texas, when the engineers' extra board was exhausted 10

The Mediation Agreement of December 12, 1940. Its conflict with the foregoing rules 12

The Position of the Carrier Prior to the Threat of Strike by the Firemen's Committee and the Making of the Mediation Agreement of December 12, 1940 15

Events Subsequent to the Mediation Agreement of December 12, 1940 19

Questions Presented 22

Specification of Errors 23

Summary of the Argument 24

Argument 27

I. Resort to the Declaratory Judgment Procedure Is Appropriate in the Circumstances Presented Here 27

II. This Case Does Not Present Any Questions of Construction of Contracts, But Only the Question of the Validity of the Mediation Agreement Under the Railway Labor Act: The Federal Law Should Be Applied 33

III. The Norris-LaGuardia Act Does Not Negative the Propriety of Granting the Relief Sought .. 35

IV. The Right of Craft Representation Is Exclusive in the Designated Representative of the Craft 40

V. Exclusive Representation of the Craft Extends to the Negotiation of and Contracting for All Rules and Working Conditions Governing Admission to or Removal from the Craft and Governing Services Performed by Those Employed in the Craft 45

VI. The Subject Matter of the Mediation Agreement Is Concerned Only with Rules Governing the Engineers' Craft 51

1. Item 1 of the Mediation Agreement purports to control the designation of denoted engineers to be called for service as emergency engineers 51

2. Item 3 of the Mediation Agreement purports to determine the question of whether and when the use of an emergency engineer is necessary. It purports to prevent the use in engineers' service of an engineer regularly employed on the engineers' working list and to require the designation of an emergency engineer 53

3. Item 2 of the Mediation Agreement purports to control the regulation of the working lists of engineers 56

4. That the subject matter of the Mediation Agreement concerns only rules involving services as engineers is confirmed by the statements of the Carrier. The apparent change of Carrier's position was induced by threat of a strike 60

VII. The Decision of the Circuit Court of Appeals Approving Dual Representation Violates the Railway Labor Act 63

1. The separateness of the engineers' and firemen's crafts is not affected by the "transfer" of men from one craft to the other.... 63

2. The "ebb and flow" of men between the two crafts does not establish a "field of overlapping interest" between the crafts, or affect the bargaining rights of the crafts.... 66

3. Regardless of the interest of individual employees or groups of employees in a dispute, only the representative chosen by the majority of a craft may treat and contract with a carrier concerning rules governing the craft 67

Conclusion 73

Appendices:

A. The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577, Act of June 21, 1934, c. 691, 48 Stat. 1185, Act of Aug. 13, 1940, c. 664, §§ 2, 3, 54 Stat. 785; U. S. C., Tit. 45, §§ 151-163) 74

B. The Declaratory Judgments Act of June 14, 1934, c. 512, 48 Stat. 955, 28 U. S. C. § 400 89

C. The Norris-LaGuardia Act of Mar. 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101-115 90

TABLE OF AUTHORITIES.

Cases.

Aetna Life Insurance Company v. Haworth, 300 U. S. 227 27

Aycotin v. Atlas Exchange Bank, 295 U. S. 209..... 34

Baltimore & O. R. Co. v. Kueper, 314 U. S. 44..... 34

Bowie v. Gonzales, 117 F. 2d 11 (C. C. A. 1)..... 30

Brillhart v. Excess Ins. Co., 316 U. S. 491..... 30

Continental Casualty Co. v. United States, 314 U. S. 527 36

Currin v. Wallace, 306 U. S. 1..... 30

D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 315 U. S. 447 34

Erie R. Co. v. Tompkins, 304 U. S. 64 34

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Company v. Southern Pacific Company, et al., 132 F. 2d 194 ..... 26, 47, 49, 65

Great Lakes Dredge & Dock Co. v. Huffman, ... U. S. ...., 87 L. ed. (Adv. Sheets) 1021, No. 849, October Term, 1942 ..... 30, 31

Irving Trust Co. v. Day, 314 U. S. 556 34

Lukens Steel Co. v. Perkins, 107 F. 2d 627, App. D. C. (Rev'd 310 U. S. 113) 30

Milk Wagon Drivers' Union v. Lake Valley Farm Products, 311 U. S. 91 37

New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552 37

Peoria Ry. Co. v. United States, 263 U. S. 528 36

Prudence Realization Corp. v. Geist, 316 U. S. 89 34

Sola Electric Co. v. Jefferson Electric Co., 317 U. S. 173 34

Standard Oil Co. v. Johnson, 316 U. S. 481 34

State of Missouri v. Ross, 299 U. S. 72 39

Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks, 281 U. S. 548 ..... 29, 37

United States v. California, 297 U. S. 175 39

United States v. Hutcheson, 312 U. S. 219 37

Virginian R. Co. v. System Federation No. 40, et al., 300 U. S. 515 ..... 25, 26, 29, 31, 32, 38, 39, 40, 41, 43, 44, 45, 46, 48, 63, 70, 72

Texts.

Borchard on Declaratory Judgments (2nd ed.), p. 313 ..... 30, 32

Borchard on Declaratory Judgments (2nd ed.), pp. 788-9 29

Borchard on Declaratory Judgments (2nd ed.), pp. 789-790 30

Frankfurter and Greene, The Labor Injunction, p. 220 39

Statutes.

Declaratory Judgments Act (Act of June 14, 1934; c. 512, 48 Stat. 995, as amended, 28 U. S. C. § 400) 2, 30, 39, 89

Judicial Code, Section 240(a), as amended by the Act of February 13, 1925 (28 U. S. C. § 347) 1

Norris-LaGuardia Act (Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115) ... 2, 22, 25, 35, 39, 90

Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, c. 691, 48 Stat. 1185; Act of August 13, 1940, c. 664, §§ 2, 3, 54 Stat. 785; 45 U. S. C. §§ 151-163) 2, 3, 22, 23, 24, 25, 26, 31, 33, 39, 42, 43, 44, 47, 60, 62, 74

Section 2, First 40

Section 2, Second 67, 72

Section 2, Fourth 40, 71

Section 2, Ninth 26, 40, 43

Senate Report No. 163, 72nd Cong., 1st Sess., p. 10 37

Senate Report No. 1005, 73rd Cong., 2d Sess., p. 2 32

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OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 295-300) is reported in 132 F. 2d 91. The opinion of the United States District Court for the Northern District of Texas (R. 70-77) is not reported.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the Fifth Circuit was entered on December 9, 1942 (R. 301). The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. § 347).

STATUTES INVOLVED.

The statutes involved are:

The Railway Labor Act, as amended (Act of May 20, 1926, c.347, 44 Stat. 577; Act of June 21, 1934, c.691, 48 Stat. 1185; Act of August 13, 1940, c.664, §§ 2, 3, 54 Stat. 785; 45 U. S. C. §§ 151-163), pertinent sections of which are set out in Appendix A;

The Declaratory Judgments Act (Act of June 14, 1934, c.512, 48 Stat. 955, as amended, 28 U. S. C. § 400), which is set out in Appendix B;

The Norris-LaGuardia Act (Act of March 23, 1932, c.90, 47 Stat. 70, 29 U. S. C. §§ 101-115), which is set out in Appendix C.

STATEMENT OF THE CASE.

Petitioner, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad (hereinafter sometimes referred to as "the representative of the engineers' craft" or "Engineers' Committee"), is the duly designated representative of the craft or class of locomotive engineers (R. 22, 95) upon the lines of the respondents Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas (hereinafter sometimes called the "Carrier"), the Carrier being one subject to the Interstate Commerce Act and the Railway Labor Act (R. 21, 37, 49). The respondent General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (hereinafter sometimes referred to as "the representative of the firemen's craft" or "Firemen's Committee") is the duly designated representative of the craft or class of locomotive firemen upon the Carrier's lines (R. 25-26, 39, 50).

Petitioner brought this action in the United States District Court for the Northern District of Texas against the Carrier seeking a declaratory judgment under the provisions of 28 U. S. C. § 400 to the effect that as such repre-

sentative it had the *exclusive* statutory *right*, by virtue of the Railway Labor Act, to treat, bargain and contract collectively with the Carrier concerning the rules and working conditions which govern the craft of locomotive engineers; that the rules contained in a so-called Mediation Agreement (R. 27-8), entered into between the Carrier and the Firemen's Committee on December 12, 1940, purport to govern locomotive engineers; and that the Carrier violated the Railway Labor Act in bargaining and in entering into said Mediation Agreement with the representative of the firemen's craft, and hence said Mediation Agreement is void and of no force and effect (R. 20-34).

The Engineers' Committee is, and for more than forty years has been, the recognized representative of the craft of locomotive engineers on the Carrier's lines (R. 95). It entered into a written agreement (Plaintiff's Ex. 1, R. 96, 97-104) with the Carrier with reference to rates of pay, rules and working conditions of locomotive engineers on or about October 1, 1918. This agreement, commonly known as the Engineers' Schedule, with some interpretations, modifications or additional agreements, remained in effect from October 1, 1918 to the time of trial (R. 95-6).

In accordance with the provisions of this Schedule and long established practice, the railroad is divided into seniority districts each with definite limits (R. 56). An engineer is employed on a particular seniority district and his seniority usually is confined to that district (R. 56-7). Stated generally, seniority gives to the engineer a preference in the choice of work in accordance with his standing upon the seniority roster of a particular seniority district (Plaintiff's Ex. 1, R. 96, 98, 145), and when it is necessary to reduce the number of engineers on the working lists the reductions are made in reverse order of seniority (Plaintiff's Ex. 1, R. 96, 102). Engineers are assigned on their respective seniority districts to various working lists or

boards which cover the different classes of service operated by the carrier. These include assigned passenger service, assigned freight service, pool[1] freight service or unassigned freight service, yard service, and extra service (R. 141-3). The engineers on such lists normally perform all of the service required by the railroad in these classes of service. For example, engineers on the pool list divide between themselves, "first in first out," the total mileage run between two terminals by trains operating in pool service during a month's time. Men on the extra lists who are called to supply vacancies when the engineers on any of the other lists are not available are similarly called first in and first out, and divide between themselves the total extra mileage available during a month (R. 143-4). Engineers on the various lists are permitted to work a certain number of miles per month according to the class of service in which they are employed. Thus in passenger service they are permitted to make between 4,000 to 4,800 miles per month, in pool service between 3,200 and 3,800 miles per month, and in extra pool service between 2,600 and 3,000 miles per month (R. 147, Plaintiff's Ex. 1, R. 96, 102, 103). The number of engineers assigned to the various working lists is regulated from time to time at regular checking periods and engineers are added to or taken off the lists as business increases or decreases, with the object of keeping the earnings or mileages of the men within the maximum and minimum limitations (R. 149, Plaintiff's Ex. 1, R. 96, 102-4).

---

[1] The engineers' pool is a list of engineers working first in first out in a particular class of service (R. 141-2).

THE RULES AND WORKING CONDITIONS INVOLVED IN THIS CONTROVERSY.

Rule 1. The rule respecting the calling of a demoted engineer to perform service as an emergency engineer.

An emergency engineer is one who is not at the time on a working list of engineers, usually having been demoted from engineer to the position of fireman and working as a fireman, who is called to perform service as an engineer when there is no engineer available on a particular working list of engineers (R. 144, 145, 153). In actual practice (with the exception of the case of the Smithville, Texas, pool which was covered by a special rule hereinafter set forth) an emergency engineer would be called under the following circumstances. When the engineer regularly assigned to a run, or whose turn in the pool it is to take out a particular run, is obliged to lay off, such vacancy would ordinarily be filled by calling the engineer first out on the engineers' extra list (R. 143, 144).[1] If, however, there are no men available on the engineers' extra list an "emergency" would exist, and this vacancy would then be filled by calling a demoted engineer (R. 144) who, after completing such emergency service, would return to the class of work being performed by him at the time he was called for the emergency service. When a man is called as an emergency engineer he is not thereby placed upon the working list of engineers, as is done in the regulation of the working lists mentioned above. As the term implies, he is called solely for the particular emergency.

At the time the Mediation Agreement of December 12, 1940 was entered into, there was in full force and effect a rule negotiated by and between the Engineers' Committee and the Carrier which governed the calling of a man for service as an emergency engineer. This rule limited

---

[1] The engineers' extra board is a list of extra engineers from which vacancies in assigned or pool service are filled (R. 142-3).

the calling of a demoted engineer for such emergency service to the senior demoted engineer *whose home terminal was at the place where such service was required or required to begin* (R. 140-141). It was subject to the exception that if such senior demoted engineer were junior on the seniority list of engineers to a demoted engineer working as fireman on the run on which the service of an emergency engineer was required, then the demoted engineer serving as fireman on that run would be called to serve as the emergency engineer thereon regardless of whether the place at which the service was required was the home terminal of the man so serving as fireman (R. 169-170).

This rule had been in effect for many years, at least as far back as 1932 (R. 141), but, as certain irregularities were found in its application, it was again formally promulgated in a ruling issued by Carrier's Vice President and General Manager, F. W. Grace, on December 14, 1938, reading as follows:

> "In order that a uniform understanding may be had concerning the use of demoted engineers at away from home terminals for what is commonly termed emergency service, the following has been approved by Brotherhood of Locomotive Engineers and is to be observed:
>
> Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used." (Plaintiff's Exhibit 2-I, R. 108, 116-117.)

The modification of the general rule above stated was evidenced by a ruling issued by Mr. Grace on May 1, 1939, reading as follows:

> "Question has arisen as to the procedure to be followed under the following circumstances:

'Fireman on freight run is demoted engineer. At the away from home terminal engineer on this run is obliged to lay off. The senior demoted engineer available, with home terminal at that point, is junior to the fireman (who is a demoted engineer) who arrives on the run at the away from home terminal point.'

In providing engineer for the return of this run under circumstances outlined, the fireman (demoted engineer) arriving on the run at point where engineer laid off, would be used as engineer on the return trip; and fireman provided in the usual way to relieve the man used as engineer." (Plaintiff's Exhibit 2-J, R. 108, 117-18.)

Rule 2. The rules and practice governing the regulation of the working lists of engineers.

The working lists of engineers are lists of the men who are to be employed regularly as engineers for a given period. The regulation of such lists includes the regulation of the number of men on such lists and the adding of men thereto or removing them therefrom as the amount of work fluctuates. Men added, in most cases, come from the firemen's working lists, and, when removed, may return to the firemen's working lists (R. 149, Plaintiff's Exhibit 1, R. 96, 102-3, Defendant's Exhibit 1, R. 214, 218-219).

Although the Engineers' Schedule provides for the process of regulation of mileage of engineers so as to keep the earnings within the maximum and minimum limitations as hereinabove set forth, it does not specify whether the process of regulation shall be conducted by the Carrier alone, the Engineers' Committee alone, or by joint action of both. By letters of March 28 and 29, 1923 (R. 29-31), the following agreement was reached between the management and representatives (including the parties herein) of the four train service brotherhoods, Brotherhood of Locomotive Engineers (B. of L. E.), Brotherhood of Locomotive Firemen and Enginemen (B. of L. F. & E.), Order

of Railway Conductors (O. R. C.), and Brotherhood of Railroad Trainmen (B. of R. T.):

"General Grievance Committee,
Missouri-Kansas-Texas Railway System,
St. Louis, March 28, 1923.

Mr. Arthur J. Lovell,
Vice-President B of L F & E,
Annex Hotel, St. Louis, Mo.,
Representing B of L E and B of L F & E.

Mr. G. W. Anderson, Vice President,
B of RT, Annex Hotel,
St. Louis, Missouri.

Mr. F. H. Nemitz, Vice President,
ORC, Annex Hotel,
St. Louis, Mo.

Gentlemen:

Acknowledge your letter of March 28th:

This is to confirm understanding in conference this morning that in the handling of crews Superintendents will be governed by existing rulings and agreements as applied by the committees, except where in conflict with the agreements between the railway and the organizations or with instructions to Superintendents effective as of April 1st, 1923, and, in the event of conflict as above, conference will be had with the General Chairman for the purpose of adopting such rule or agreement as will protect the interests of all concerned.

From verbal statements made by you I see nothing wrong with the agreements to which you refer or any reason why these cannot be carried out and with the understanding that your Local Chairman will be instructed to get in touch with the Superintendent, provide him with copy of rulings and agreements, and render assistance in the way of furnishing information as to these outstanding agreements and practices, we do not anticipate any confusion whatever in the carrying out of our notice effective April 1st, 1923.

Thank you for your assistance and cooperation in this movement.

Yours truly,

(Signed) W. E. WILLIAMS."

(R. 29-30, 40, 51.)

"General Grievance Committee,
Missouri, Kansas & Texas Railway System,
St. Louis, Missouri.

March 29, 1923.

Mr. W. E. Williams, Manager,
Department of Personnel,
Missouri-Kansas-Texas Railway,
St. Louis, Missouri.

Dear Sir:

As a matter of record, this will acknowledge receipt of your letter of March 28th, confirming understanding reached during conference this date, respecting the question of the Management effective April 1st, 1923, taking over the handling of assignments of Enginemen, Conductors, Trainmen and Yardmen, in accordance with existing rules and agreements and rulings made by the General Committees of the four organizations.

Yours truly,

(Sgd.) F. H. NEMITZ,
Vice President, ORC.

(Sgd.) G. W. ANDERSON,
Vice President, B of RT.

(Sgd.) ARTHUR J. LOVELL,
Vice President, B of L F & E,
Also representing the B of LE."

(R. 30, 31, 40, 50.)

Subsequently, by exchange of correspondence between the Engineers' Committee and the Carrier, under dates of April 4, 1923 and April 10, 1923, this agreement was clari-

fied, so far as the engineers were concerned, to show that the handling of the lists would be in accordance with the existing agreement between the Engineers' Committee and the Carrier (Plaintiff's Exhibits 2-P, 2-Q, R. 108, 126-8), and the engineers' working lists were to be handled separately between the Engineers' Committee and the Carrier (R. 168-9). We quote from Exhibit 2-Q as follows:

> "* * * the intent of the instructions we have issued is that superintendents will take over the assignment and handling of men in accordance with the existing agreement between the B. of L. E. and the railroad." (R. 128.)

The effect of this understanding was that the placing of engineers upon and removing them from the engineers' working lists were to be handled by the Engineers' Committee, through its local chairman, and the Carrier (R. 168-9). In actual practice the regulation of the engineers' lists, committed to the management and the Engineers' Committee by the aforementioned agreements, "drifted" into the hands of the Engineers' Committee alone, and at the time the Mediation Agreement of December 12, 1940 was entered into, the practice was, and for some time had been, that the engineers' local chairmen were handling the regulation of the engineers' working lists (R. 158-9).

Rule 3. Rule with respect to the method of filling vacancies in the engineers' pool at Smithville, Texas, when the engineers' extra board was exhausted.

At the time the Mediation Agreement of December 12, 1940 was entered into, there was in full force and effect a written agreement between the Engineers' Committee and the Carrier resulting from correspondence between E. O. Johnson, B. of L. E. General Chairman, and W. E. Williams, Carrier's Manager of Personnel (Plaintiff's Exhibits 2-K and 2-L, R. 108, 119-21), which agreement culminated in the letter of instruction issued by Mr. Wil-

liams to D. C. Dobbins, Carrier's superintendent at Smithville, Texas, reading as follows:

"St. Louis—May 14, 1929.

Mr. D. C. Dobbins:

Referring to your 306 of April 20th, regarding the handling of engineers.

There are no objections to your request that where there are no extra engineers available and there are pool crews on the pool board, that instead of using emergency engineers, the regular pool engineers will be used by setting them up to the next turn ahead, etc.

Emergency vacancies of this kind in pool through freight service should be filled by engineers assigned to this service rather than to use emergency men. This not to apply to vacancies in any other class of service, and should be confined to emergency cases and all other vacancies regulated by not permitting engineers to lay off except where there are extra engineers to fill their places, if there is a sufficient number of engineers assigned to properly take care of the extra work. If a sufficient number is not assigned, assignment should be made as soon as it is known that there are not sufficient number assigned, keeping in mind the mileage limitations of the agreement.

Yours truly,

(Signed) W. E. Williams."

(Plaintiff's Exhibit 2M, R. 108, 121.)

The rule thereby established for the filling of pool vacancies at Smithville was in the nature of an exception to the rule governing the use of emergency engineers as set forth in Rule 1 of this heading (R. 145). The reason for this exception was stated by General Chairman Johnson to be that at this particular point so many engineers were "laying off" at times when extra engineers were not available, resulting in the calling of emergency engineers, that the regularly assigned engineers were not making the minimum mileage permitted by the schedule, and that if all

of the permissible mileage was worked by the assigned engineers the working list could be maintained or in some instances increased by the addition of another man (R. 146-7).

The Mediation Agreement of December 12, 1940. Its conflict with the foregoing rules.

While a threatened strike was pending as a result of a strike vote taken by the Firemen's Committee (R. 198, 201), the Carrier, without joinder or consent of the Engineers' Committee (R. 40, 50), made and entered into a written agreement with the Firemen's Committee as follows:

"Mediation Agreement
Brotherhood of Locomotive Firemen and Enginemen
and
Missouri-Kansas-Texas Lines.

In settlement of differences between the employees of the Missouri-Kansas-Texas Lines, represented by the Brotherhood of Locomotive Firemen and Enginemen, and the carrier above referred to, it is mutually agreed that the questions submitted to mediation by the organization under date of August 7, 1940, National Mediation Board Case A-838, are hereby disposed of as follows:

(1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

(2) Effective February 1, 1941, the carrier will apply the rules in the schedules governing the regulation of working lists in the same manner as contemplated by the letters of agreement dated March 28, 1923, and March 29, 1923, copies of which are attached hereto. It is understood this method of adjusting the lists may be modified by mutual agreement between the carrier and the interested organizations.

(3) The question raised in Item 1 of the application for mediation is disposed of by exchange of letters between the parties and the Board." (R. 27-28.)

The letters of March 28, 1923, and March 29, 1923, referred to in Item 2 of said Mediation Agreement, are the letters set forth at pp. 8, 9 herein (R. 29-31).

The letters referred to in Item 3 of said Mediation Agreement are as follows:

"Washington, D. C., December 12, 1940.

Mr. H. M. Van Sant, Vice President,
Brotherhood of Locomotive Firemen and Enginemen,

Mr. Chas. McKemy, General Chairman,
Brotherhood of Locomotive Firemen and Enginemen,

Washington, D. C.

Gentlemen:

In accordance with the understanding reached in conference today, steps will be taken to adjust the complaint with reference to handling of demoted engineers who are back firing at Smithville to conform to Item 1, of the Mediation Agreement Case A-838, dated today. That is to say, the practice in filling vacancies on engineers' pool board at Smithville will be the same as present practice at other district terminals on the railroad. This will be done as promptly as possible. Will you kindly acknowledge your acceptance.

Very truly yours,

(Signed) F. W. Grace,
Vice President-General Manager,
Missouri-Kansas-Texas Lines.

cc: National Mediation Board." (R. 31, 51.)

"Washington, D. C., December 12, 1940.

Mr. F. W. Grace, Vice President and Gen'l Mgr.,
Missouri-Kansas-Texas Lines,
Washington, D. C.

Dear Sir:

This will acknowledge your letter of even date regarding the complaint with respect to using demoted

Engineers and the handling of engineers' pool board at Smithville.

You have correctly stated the understanding and your assurance that the complaint will be adjusted is accepted.

Yours very truly,

(Sgd.) H. M. VAN SANT,
Vice President, Brotherhood of Locomotive Firemen & Enginemen.

(Sgd.) CHAS. McKEMY,
General Chairman, Brotherhood of Locomotive Firemen & Enginemen.

cc: National Mediation Board." (R. 32, 51.)

As appears from its text in conjunction with the letters annexed thereto, the Mediation Agreement was in direct conflict with (1) the rule with respect to calling emergency engineers, (2) the rule and practice regulating the working lists of engineers, and (3) the rule for filling vacancies in the pool at Smithville, theretofore agreed upon by the Engineers' Committee and the Carrier as hereinbefore set forth under Rules 1, 2 and 3. Whereas Rule 1 had required the use as an emergency engineer of the senior available demoted engineer whose home terminal was at the point where the service was required (R. 108, 116-118), Item 1 of the Mediation Agreement removed the limitation with respect to the terminal and required the use of the senior available demoted engineer without reference to the location of his home terminal (R. 27). Whereas Rule 2 had provided for the regulation of the working lists of engineers by the railroad and the Engineers' Committee, and the practice of having the lists regulated by the Engineers' Committee alone had become definitely established thereunder (R. 158-9, 168-9), Item 2 of the Mediation Agreement, as interpreted and applied by the Carrier, required that the regulation of the engineers' lists be handled by the

Carrier, the Engineers' Committee and the Firemen's Committee (R. 27, 29-31, 148-9). Whereas Rule 3 had required that in the case of a vacancy in the engineers' pool at Smithville when the engineers' extra board was exhausted the vacancy should be filled by "setting up" or assigning the next pool engineer, Item 3 of the Mediation Agreement required such vacancy to be filled by calling the senior available demoted engineer, regardless of where he was located on the seniority district and without reference to whether he was located at the terminal where the service was to be performed (R. 27-8, 31-2, 51).

The Position of the Carrier Prior to the Threat of Strike by the Firemen's Committee and the Making of the Mediation Agreement of December 12, 1940.

On June 23, 1939, the Carrier sought the services of the Mediation Board in a controversy initiated by the Firemen's Committee, respecting the same matters involved in Items 1 and 3 of the Mediation Agreement of December 12, 1940, by addressing a letter to the National Mediation Board, Washington, D. C., with five letters attached thereto, designated as "attachments" (Plaintiff's Exhibit 3, R. 174, 175-190). In said letter, the Carrier, acting by and through F. W. Grace, its Vice President and General Manager, set forth the questions involved as follows:

> "As to Item 1 (Attachment No. 1): The question involved was the subject of a letter of your Board, dated June 23, 1938, file C 17, to this Carrier, asking a statement on a dispute, submitted to the Board by the Brotherhood of Locomotive Firemen & Enginemen, stated as follows:
>
> > 'Refusal of Carrier to use qualified engineers who have been demoted to firing service, to fill temporary vacancies as engineers in pool freight service when the engineers' extra board is exhausted at Smithville, Texas, or in the same manner as such demoted engineers are used to fill a vacancy

in yard service at Smithville or outlying points when engineers' extra board is exhausted.' " (R. 176.)

* * * * *

"As to Item No. 2: In June, 1938, the General Chairman of the Brotherhood of Locomotive Engineers complained to the carrier of a lack of uniformity in the use of engineers for 'emergency' service, at away from home terminals, and the following instructions were issued December 14, 1938, with the concurrence of the General Chairman of the Engineers' Organization:

'Where engineer cannot be secured from extra board in the usual manner and the use of emergency engineer is necessary the senior demoted engineer (when such is available) the home terminal of whose run or assignment is at the point where the service is required or required to begin will be used.' (R. 177.)

Item No. 3: This is referred to as the 'Roach case.' This reference is to a particular happening, but it really involves, as the last paragraph of the letter of May 25th (Attachment No. 1) shows, the broad question of regulating the engineers' working lists generally." (R. 177.)

The Carrier at that time stated in said letter its position to the effect that it had no right to treat with the Firemen's Committee on the matters involved in said questions. We quote from the letter as follows:

"It will be obvious from the foregoing—*That the class of service involved* in the questions at issue *is that of locomotive engineer.*[1] That the Brotherhood of Locomotive Firemen & Enginemen seeks to have the carrier adopt certain rules representing its views for the handling of locomotive engineers; *That the carrier is being asked by the Brotherhood of Locomotive Firemen & Enginemen to treat with the firemen's organization as (at least partially) the representative*

[1] Italics ours in this and all other quotations under this heading.

of the class of service of locomotive engineer, for which class the carrier understands the Brotherhood of Locomotive Engineers is the accredited and the exclusive representative." (R. 178.)

This position of the Carrier was, in effect, a re-statement of the position previously taken by the Carrier on the same matters as set forth in Attachments 3, 4 and 5 to said letter, from which the excerpts hereinafter set forth are taken:

Excerpts from Attachment 3, being a letter from the Carrier to the Secretary of the National Mediation Board, dated July 6, 1938:

"This dispute grows out of a complaint made by the firemen's organization about a practice followed at Smithville, Texas, for a number of years, whereby men on the engineers chain gang or pool freight board, when vacancies occur due to men being off and the assigned extra engineers are not available, the engineers regularly assigned to the pool board are moved up to fill the vacancies, until assigned extra engineers are again available." (R. 184.)

"* * * The agreement with the engineers' organization contains the following:

'We affirm the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers shall be vested in the regularly constituted committees of the Brotherhood of Locomotive Engineers.'

The following statements seem pertinent to the subject:

The service involved in the dispute is not service of locomotive firemen; it is service of locomotive engineers. It involves individuals who have been promoted to engineers, but who by reason of insufficient train service are normally reduced to firing.

The practice complained of by the firemen's organization was in existence from March, 1929, until December, 1937, before a complaint was made.

While we have not denied and have no intention of denying the firemen's organization's right to represent such individual engineers as may elect to have such representation, we think we are bound to recognize the right of the engineers' organization to represent locomotive engineers, as a class.

Replying to the specific questions you ask:

Question: Whether the dispute involves a request of the organization for a change in rules of existing agreement.

Answer: The firemen's organization is seeking to apply the interpretation of the organization to the situation in question, whereas the engineers' organization, which is the accredited representative of the locomotive engineers as a class, denies the right of the firemen's organization to interfere with the interpretation, application, etc., of the engineers' agreement.

Question: Whether the organization has served thirty days notice of change in rules.

Answer: No. The agreement involved is that with the locomotive engineers, whereas the complainant is the locomotive firemen.

Question: Whether the dispute involves the application or interpretation of existing rules.

Answer: Yes. But not of existing rules negotiated by the complainant organization." (R. 185-186.)

Excerpt from Attachment 4, being letter from the Carrier to Mr. Charles McKemy, General Chairman of the Firemen's Committee, dated December 19, 1938:

> "What we consider our obligation is simply stated. That is, we are obligated to recognize the Brotherhood of Locomotive Engineers as the accredited and exclusive representative of locomotive engineers as a class." (R. 187.)

Excerpts from Attachment No. 5, being a letter from the Carrier to Mr. Charles McKemy, General Chairman of the Firemen's Committee, dated April 11, 1939:

"In any case, however, we consider it our obligation, imposed upon us by statute, to treat with the engineers' organization as the accredited representative *for the services of men used as engineers*, the same as we consider the firemen's organization in connection with the services of men used as firemen; and we have not and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing *one class to cover the handling of men used in another service*, for which there is an accredited representative for that class." (R. 189.)

"* * * we shall also recognize what we consider the exclusive right of the engineers' organization *to legislate for locomotive engineers as a class*; and that no agreement has been made with your or any other organization, or in our opinion could lawfully be made, which abridges such right." (R. 189-190.)

Mr. Grace, Vice President and General Manager of the Carrier, testified (R. 198) that prior to the time of the strike threatened by the Firemen's Committee in 1940 the Carrier had taken the position it was obligated to treat only with the engineers' organization as the accredited representative of the engineers on the matters involved in the Mediation Agreement, and that the Carrier in changing its position was influenced by the threat of strike (R. 201).

Events Subsequent to the Mediation Agreement of December 12, 1940.

On December 19, 1940, the Carrier gave notice (Plaintiff's Exhibits 2-R, 2-S, R. 108, 128-131) that it would cancel the aforesaid existing agreements (Plaintiff's Exhibits 2-I, 2-J, R. 108, 116-8, also quoted at R. 128-131, 2-M, R. 108, 121) which had been entered into with the Engi-

neers' Committee covering the subjects contained in Items 1 and 3 of the Mediation Agreement of December 12, 1940. Following such notices conferences were held between the Engineers' Committee and the Carrier, but no agreement was reached (R. 161). The Engineers' Committee then invoked the aid of the Mediation Board, but mediation failed (R. 161). On March 24, 1941, the Carrier again gave notice that the agreements with the Engineers' Committee would be canceled as of April 13, 1941 (Plaintiff's Exhibit 2-X, R. 108, 137-138) and they were so canceled by the Carrier on said date (R. 161). No notice was given of any change in the agreements constituting the subject matter of Item 2 of the Mediation Agreement, but the Carrier changed its practice thereunder by requiring concurrence of the Firemen's Committee in the regulation of the engineers' working lists (R. 149).

The Engineers' Committee then instituted this action, as aforesaid, seeking a declaratory judgment to the effect that, as the representative of the engineers' craft, it had the exclusive statutory right, created by the Railway Labor Act, to treat, bargain and contract collectively with the Carrier concerning the rules and working conditions which pertain to the entry into or removal from the craft of locomotive engineers or govern the services to be performed by members of that craft; that the three items included in the aforesaid Mediation Agreement related to and concerned rules and working conditions governing said craft of engineers and the regulation of such matters; that, hence the Carrier had violated the Railway Labor Act in bargaining, and in entering into the Mediation Agreement, with the representative of the firemen's craft, and, therefore, the Mediation Agreement should be declared void and of no force and effect (R. 20-34). While the Engineers' Committee objected to the fact that the Mediation Agreement was in conflict with the rules theretofore agreed upon between the Engineers' Committee and the Carrier, the theory

upon which the action was based and the vice complained of were the illegality of the Carrier's bargaining with the representative of the firemen's craft, and its contracting with the latter concerning the subject matter of the Mediation Agreement.

With permission of the District Court the Carrier made the representative of the firemen's craft third party defendant (R. 9).

The District Court held that the matters covered by the Mediation Agreement covered both crafts, that the Carrier had the right to negotiate with the designated representatives of both crafts, or either of them, concerning matters covered by the Mediation Agreement, that the Mediation Agreement was valid and did not violate the Railway Labor Act or infringe any right or agreement of the petitioner; and entered a declaratory decree accordingly, but nevertheless dismissed the complaint (R. 68-78).

Upon review, the Circuit Court of Appeals for the Fifth Circuit, pursuant to its opinion rendered on December 9, 1942 (R. 295-300, 132 F. 2d 91), entered the following declaratory decree in lieu of the decree of the District Court and affirmed the judgment of the District Court as thus modified:

"It is now here decreed and declared:

1. That the appellant Committee as the representative of the engineers has not the exclusive right under the Railway Labor Act to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa; but the matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer and if possible agree.

2. The mediated agreement with the Firemen's Committee is not illegal and void, but it is incomplete as not binding the craft of engineers, and if not acquiesced in by the engineers, the employer can terminate it under the Act.

It is further ordered, adjudged and decreed that the decree of the said District Court in this cause as so modified be, and the same is hereby, affirmed. Costs of appeal to be paid one-half by appellant and one-half by appellees. * * *" (R. 301.)

Petition for certiorari was filed in this Court on March 8, 1943, and the order allowing certiorari was granted on May 24, 1943 (R. 305).

QUESTIONS PRESENTED.

At the time the writ of certiorari was allowed, the court requested counsel to discuss in their briefs and on oral argument the following questions, so far as applicable:

1. Whether resort to the declaratory judgment procedure is appropriate in the circumstances;

2. Whether any questions of the construction of the contracts involved are governed by state or by Federal law;

3. What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

Questions presented upon the merits are:

1. Does the Railway Labor Act, which creates in the majority of a craft or class "the right to determine who shall be the representative of the craft or class for the purposes of" the Act, vest in the duly designated representative of the craft of locomotive engineers the exclusive right to bargain and contract collectively concerning the rules and working conditions which pertain to or govern the entry of engineers into, and their removal from, said craft, and the service to be performed by the members of said craft?

2. Was the right of the designated representative of the craft of locomotive engineers invaded and infringed when the carrier bargained with the designated representative of the firemen's craft and entered into an agree-

ment with said firemen's representative concerning rules governing (1) the calling of demoted engineers to perform emergency service as engineers (who should be called to perform service as an emergency engineer when the engineers' extra board is exhausted), (2) the regulation of the working lists of engineers, and (3) the method of filling vacancies on the engineers' pool board when no extra engineers are available to perform service as engineers?

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In holding that the petitioner, as the representative of the craft of locomotive engineers, has not the exclusive right, under the Railway Labor Act, to confer and agree about the rules for transferring employees from the craft of firemen to the craft of engineers; and in holding that such matter being the concern of both crafts, the representatives of both crafts are by the Act directed to confer, and, if possible, agree.

2. In holding that the petitioner, as the representative of the craft of locomotive engineers, has not the exclusive right under the Railway Labor Act to confer and agree with the Carrier concerning the rules governing the entry of employees into, and their removal from, the craft of engineers.

3. In holding that the matter of rules governing entry into the craft of engineers was the concern of both the crafts of locomotive engineers and locomotive firemen, and that the representatives of both crafts are by the Act directed to confer, and, if possible, agree.

4. In holding that the Mediation Agreement of December 12, 1940, entered into between the Carrier and the Firemen's Committee is not illegal and void.

5. In failing to declare the Mediation Agreement of December 12, 1940, invalid, although it held such agree-

ment to be incomplete and not binding on the craft of engineers.

6. In failing to hold that the right to negotiate and make with the Carrier agreements concerning rules and working conditions of the craft of locomotive engineers is exclusively the right of the Engineers' Committee as the duly designated representative of that craft.

7. In failing to hold that the action of the Carrier in treating and contracting with the Firemen's Committee concerning the rules contained in the Mediation Agreement was illegal.

8. In failing to declare the said Mediation Agreement invalid in so far as it provides for rules governing performance of service in the engineers' craft or pertains to entry into the engineers' craft or to removal therefrom or to regulation of the engineers' working lists.

SUMMARY OF THE ARGUMENT.

A substantial, definite controversy concerning adverse legal interests and touching the legal relations of the parties appropriate for judicial determination exists between the parties herein. No questions of comity between federal and state courts are involved, and the case is one where, in the exercise of proper judicial discretion, the court should take jurisdiction to make a declaration.

The case depends upon the construction of the Railway Labor Act and raises the question of whether the Engineers' Committee, as the designated representative of the craft of locomotive engineers, has the exclusive right to negotiate and contract with the Carrier concerning all rules and working conditions governing entry of engineers into and their removal from the craft of locomotive engineers and the services to be performed by members of the craft, and whether the Carrier is prohibited by the Act from treating and contracting concerning such matters with the

Firemen's Committee. Since no question of the construction of the terms of a contract is involved but only a question of the validity of such contract under the Railway Labor Act, there are no questions of the construction of contract involved which are governed by state law and federal law should be applied.

The Norris-LaGuardia Act does not negative the propriety of granting the relief sought and has no bearing thereon, since no injunction is asked. One of the purposes of the Railway Labor Act is to require carriers and employees to make every reasonable effort to enter into agreements concerning rules and working conditions and to require the carrier to treat only with the true craft representative in such matters. This purpose is in harmony with the public policy declared in the Norris-LaGuardia Act, and no provision of that Act immunizes from injunction the act of a carrier in treating and contracting with one other than the true craft representative. The Railway Labor Act was enacted subsequent to the Norris-LaGuardia Act, and this Court has held that the provisions of the Railway Labor Act may not be rendered nugatory by the earlier provisions of the Norris-LaGuardia Act.

Under the Railway Labor Act, as construed by this Court in *Virginian R. Co. v. System Federation No. 40, et al.*, 300 U. S. 515, the Engineers' Committee, as the duly designated representative of the craft of locomotive engineers on the Carrier's lines of railroad, has the exclusive right of representation of that craft. This right of exclusive representation extends to the negotiation of and contracting for all rules and working conditions governing admission of engineers to or their removal from the craft and governing the services performed by those employed in that craft. In entering into the Mediation Agreement of December 12, 1940 with the Firemen's Committee, which is the representative of the firemen's craft on the Carrier's lines of railroad and is not and never has been the repre-

sentative of the engineers' craft thereon, the Carrier violated the duty imposed upon it by the Railway Labor Act which prohibited it from treating with the Firemen's Committee on the matters therein involved, since such matters related to and were concerned with rules governing entry into or removal from the craft of locomotive engineers or services to be performed by members of that craft. The craft of locomotive engineers and the craft of locomotive firemen are admittedly two separate crafts, and the line of demarcation between them is at the point of entry into the one craft or the other (*General Committee of Adjustment v. Southern Pacific Company, et al.*, 132 F. 2d 194). The Circuit Court of Appeals, though holding that the Mediation Agreement was incomplete, nevertheless held it to be validly entered into, and thus failed to enforce petitioner's right of exclusive representation, and, in effect, upheld a doctrine of dual representation concerning matters involved in the Mediation Agreement, contrary to the holding of the *Virginian R. Co.* case, *supra*.

The Railway Labor Act should be construed as herein contended by petitioner, because such construction upholds the specific statutory provision creating the right of majority craft representation and sustains and makes realistic the right of exclusive craft representation in treating with the carrier under Section 2, Ninth, of the Act. It draws a desirable and workable line of demarcation between the rights of the crafts to treat, bargain, and contract collectively with the carrier, so that each craft is properly limited in this respect to the "rules and working conditions" pertaining to admission to and removal from the craft and to the services then being performed by the members thereof. It eliminates dual representation as to all matters pertaining to a particular craft; it minimizes the opportunity for jurisdictional disputes between the crafts; and by the elimination thereof paramount controlling effect is given to the primary purpose of the Act—"avoiding interruption of commerce."

ARGUMENT.

I.

RESORT TO THE DECLARATORY JUDGMENT PROCEDURE IS APPROPRIATE IN THE CIRCUMSTANCES PRESENTED HERE.

The primary requirement for resort to the declaratory judgment procedure is that there be a case of "actual controversy." The "controversy" must be real, substantial, definite, concrete, appropriate for judicial determination between adverse legal interests, touching legal relations of the parties, and of such a nature that specific relief through a conclusive decree can be granted. It is not essential that the adjudication require payment of damages, or the award of process, or that an injunction be sought, or that it be shown that irreparable injury is threatened. *Aetna Life Insurance Company v. Haworth*, 300 U. S. 227.

Such a controversy exists in the instant case. As indicated in the Questions Presented, it is whether petitioner Engineers' Committee has the exclusive right under the Railway Labor Act collectively to bargain and contract with the Carrier concerning the rules governing entry into the craft of locomotive engineers and the performance of service by members of the engineers' craft, and whether the action of the Carrier in bargaining and contracting upon this subject with the Firemen's Committee was lawful.

This controversy appears from the pleadings. It was alleged in the first amended complaint (R. 26-33) and admitted in the Carrier's answer (R. 51), which then went on to state:

> "For further answer to said amended complaint and answer of Third Party Defendant, these defendants would respectfully show to the Court that the conditions described in plaintiff's petition have not only given rise to the controversy described in para-

graph 10 thereof, but for many years have been fruitful of controversy;" (R. 54.).

* * * * *

"That the continued existence of these controversies has and will continue to be a source of trouble, confusion and expense to defendants, and has and will continue to materially hamper defendants in the performance of their common carrier duties to the public, and defendants therefore join in the prayer of the plaintiff that the Court determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services." (R. 59.)

The record shows that the dispute is real, definite and concrete. For many years the Engineers' Committee had in effect with the Carrier collective agreements covering the rules in question. Although the Firemen's Committee endeavored to have these rules changed by the Carrier and mediation was sought by both the Firemen's Committee (R. 172) and the Carrier (R. 172, Plaintiff's Exhibit 3, R. 174, 175-190), the Carrier at all times prior to entering into the Mediation Agreement here involved took the position that the rules in dispute were engineers' rules and that it could not negotiate with the firemen on the subject (Plaintiff's Exhibit 3, R. 174, 175-190). In 1940, just prior to the execution of the Mediation Agreement, a strike vote was taken and strike was authorized by the firemen's craft (R. 43, 58). When the Carrier yielded to the pressure of the threatened strike by the firemen and entered into the Mediation Agreement there was immediately a controversy between the Carrier and the Engineers' Committee. While as a result of the Mediation Agreement the Carrier cancelled the rules on the same matters theretofore agreed upon with the Engineers' Committee, such action is not the gravamen of the petitioner's complaint. Petitioner's objection was and is that the Carrier had no right to treat, bargain and contract with the Firemen's Committee

respecting the three rules involved in the Mediation Agreement, because this right was exclusively vested in the Engineers' Committee. Therefore, there was and is a real, definite and substantial controversy.

The legal interests of the parties respecting these matters were adverse. Petitioner's right exclusively to bargain and contract for the engineers' craft, hereinafter discussed, (*Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, 548) is a valuable property right (*Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548, 571). The claim of petitioner that its right of representation is exclusive is opposed to, and impossible of reconciliation with, the position taken by the Carrier as well as the position asserted by the Firemen's Committee in its answer (R. 37-48), and the interests of the parties are therefore clearly adverse.

The interpretation and construction of the provisions of the Railway Labor Act upon which petitioner's claims are based are appropriate subjects of declaratory relief. As Professor Borchard has observed,[1] the construction and interpretation of statutes and the question of their application to the plaintiff is a "common quest" of declaratory action. He adds that "The clarification of statutory rights, powers, privileges, and immunities is of growing importance in the solution of conflicts not only between the Government and the individual, in which relation the issue most frequently arises, but also between private individuals *inter se*, for legal relations are coming more and more under the control of statutory regulation. * * * Private persons have occasion to seek the construction or interpretation of statutes, because the statute appears to confer upon them some right or benefit, which is denied them, or to impose some burden, from the effects of which they consider themselves privileged or immune."

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[1] *Borchard, on Declaratory Judgments* (2nd ed.), pp. 788-9.

There is no reason to believe that the Federal Declaratory Judgments Act is less responsive to this purpose than the various state acts under which many declarations have been made concerning the interpretation and construction of statutes.[1] The Federal Act has been held to permit declarations interpreting and construing federal statutes as conferring rights upon private litigants.[2] And it is now settled that the Federal Act permits declarations as to the constitutionality and validity of federal statutes,[3] in which type of case it is often necessary to construe the meaning of the statute.

The remaining question appears to be whether or not the court should exercise its jurisdiction to make a declaration. (cf. *Brillhart v. Excess Ins. Co.*, 316 U. S. 491; *Great Lakes Dredge & Dock Co. v. Huffman*, ... U. S. ...., 87 L. ed. (Adv. Sheets) 1021, No. 849, October Term, 1942.).

It may be noted first that the instant case is dissimilar to the *Brillhart* case in that no companion suit in a state

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[1] The Uniform Declaratory Judgment Act (Sec. 2) provides that "Any person • • • whose rights, status, or other legal relations are affected by a statute • • • may have determined any question of construction • • •, arising under the • • • statute • • • and obtain a declaration of rights, status, or other legal relations thereunder." The numerous cases wherein the interpretation of a statute has been the direct object of a declaratory action are gathered in *Borchard, op. cit.* pp. 789-790.

The Committee Note appended to Rule 57 of the proposed new Rules of Federal Procedure stated in part "Written instruments, including ordinances and statutes, may be construed before or after breach at the petition of a properly interested party, process being served on the private parties or public officials interested. In other respects the Uniform Declaratory Judgment Act affords a guide to the scope and function of the federal act." See also *Borchard, op. cit.* p. 313.

[2] *Bowie v. Gonzales*, 117 F. 2d 11 (C. C. A. 1) construing various provisions of the Fair Labor Standards Act; cf. *Lukens Steel Co. v. Perkins*, 107 F. 2d 627, App. D. C. (Rev'd 310 U. S. 113), construing the term "locality" as used in the provision of the Public Contracts Act of June 30, 1936.

[3] *Currin v. Wallace*, 306 U. S. 1.

court has been filed. As shown in our answer to Question 2 propounded by the court, there are no questions here of the construction of a contract which are governed by state law, and, because petitioner's cause of action is based upon the interpretation and effect of the Railway Labor Act, obviously it cannot be adjudicated authoritatively and finally by a state court since it would ultimately be subject to review by this Court. Accordingly, the reason which led the court to remand the *Brillhart* case does not exist here.

The *Great Lakes Dredge & Dock Co.* case (87 L. ed. at p. 1024) held that under the circumstances presented, jurisdiction under the Declaratory Judgments Act should be exercised in conformity with established equitable principles. In *Virginian R. Co. v. System Federation No. 40, supra*, this Court approved the exercise of equitable jurisdiction and the issuance of an injunction restraining the carrier from doing what is complained of here, i.e., from entering into any contract concerning the rules governing the craft in question with any representative other than the duly designated representative of such craft (300 U. S. at p. 540). This suggests that petitioner in the instant case might have sought an injunction rather than declaratory relief. We think the remedy of injunction would have been appropriate. However that may be, it would seem clear that the considerations which led the court to exercise jurisdiction and issue an injunction in the *Virginian R. Co.* case call for the exercise of jurisdiction to make a declaration here. These considerations in essence were that the Congress had provided in the Railway Labor Act a plan for collective bargaining designed to promote peaceful settlement of labor controversies, and that the carrier had refused to bargain in the manner prescribed, with consequent defeat of the statutory purpose. The same elements are presented here as compelling reasons for the exercise of jurisdiction.

The rule has been stated that the court should exercise its discretion to render a declaratory judgment "where it will serve a useful social purpose, and especially where it will terminate the controversy or settle the uncertainty giving rise thereto." *Borchard op. cit.* p. 313. In this connection the Senate Committee in its report upon the federal bill[1] said: "It [the declaratory judgment] declares conclusively and finally the rights of parties in litigations over a contested issue, a form of relief which often suffices to settle controversies and fully administer justice." These functions, we are confident, will be served by the declaration sought in the case at bar. The litigation already has served a useful purpose. Petitioner could have pursued the drastic course of calling a strike when the Mediation Agreement was made, or when the carrier subsequently abrogated petitioner's rules on the matter. Instead it sought by peaceable means to have decided by conclusive decree the extent of its right to negotiate and contract concerning the subjects in controversy. When this litigation is completed the dispute over the right to negotiate and agree upon the rules in question will be settled as between all of the parties. The obstacle to collective bargaining occasioned by the uncertainty of the meaning of the Railway Labor Act in this respect will be removed. It is not to be assumed that the declaration will be ineffectual, or that the parties will not give heed thereto, and that when the collective bargaining rights of the contending crafts have been defined and determined proper agreements cannot be reached. Cf. *Virginian R. Co.* case, p. 552. Nor can the fact be ignored that the Congress, in the Railway Labor Act, deliberately expressed its judgment that collective bargaining, according to the plan there laid down, will provide orderly settlement of railway labor disputes. *Idem.* p. 551.

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[1] Senate Report No. 1005, 73rd Cong., 2d Sess., p. 2.

II.

THIS CASE DOES NOT PRESENT ANY QUESTIONS OF CONSTRUCTION OF CONTRACTS, BUT ONLY THE QUESTION OF THE VALIDITY OF THE MEDIATION AGREEMENT UNDER THE RAILWAY LABOR ACT. THE FEDERAL LAW SHOULD BE APPLIED.

Although there were a number of contracts referred to in the pleadings, the Mediation Agreement is the only agreement concerning which declaration was made or is now sought in the case.

Fundamentally, the question of the *construction* of the Mediation Agreement is not involved here. The meaning of the Agreement is perfectly clear to the parties. They understand alike the language used therein. There is no dispute over what the Agreement covers or how it is to be applied if given effect. The controversy is over the question of its validity.[1] As heretofore pointed out, petitioner's claim of invalidity is that under the Railway Labor Act the Carrier had no right to negotiate with the Firemen's Committee on the subject, and the Agreement is therefore void.[2] The substantial question thus presented is that of the power and authority of the Carrier *ab initio* to negotiate on the subject, and not that of the meaning and effect of the Agreement as made.

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[1] The amended complaint prayed that the Mediation Agreement be declared "null and void and of no force and effect" (R. 34); the answer of the Firemen's Committee asked the court to declare said Agreement "valid and binding upon all parties to this cause" (R. 48); and the answer of the Carrier prayed that the court "determine for the guidance of all parties the respective rights of the parties with respect to contracting for and performance of such services as are hereinabove referred to" (R. 59).

[2] The Circuit Court of Appeals stated in its opinion (R. 297): "The Engineers' Committee * * * claimed for itself, as the bargaining representative of the engineers, the exclusive right to bargain with the railroad on the subject matter in dispute, and that its right has been denied by making the mediated agreement with the Firemen's Committee which therefore is void; and there being a present definite controversy thereabout, a declaration to the just stated effect is prayed."

The validity of the Mediation Agreement depends upon the construction and effect given to the Railway Labor Act. This clearly presents a question of Federal law.

Erie R. Co. v. Tompkins, 304 U. S. 64, does not require resort to state law here. Thus far this Court has not applied the doctrine of that case to any cases except those arising under diversity of citizenship. See *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, 315 U. S. 447, 455, 467. Diversity is not shown in our case, the action being brought as one arising under a law regulating commerce, to wit, the Railway Labor Act.

The rule of the *Tompkins* case has been held by this Court to be inapplicable to cases involving the interpretation and application of Federal statutes, in which cases it is well settled that federal, not local, law applies. *Prudence Realization Corp. v. Geist*, 316 U. S. 89, 95, and cases there cited. *Baltimore & O. R. Co. v. Kneper*, 314 U. S. 44. And even though state law be involved to some extent in the process of decision, the *Tompkins* case is nevertheless inapplicable here because of the controlling effect of the federal statute upon the validity of the Mediation Agreement. See *Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173, 176, where it was said that the doctrine of the *Tompkins* case is "inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law."

Where, as here, the validity of a contract is challenged on the ground that a Federal statute incapacitates the parties from making it, the existence and effect of the contract and the extent of its obligation become federal questions and finality cannot be accorded the views of a state court. Cf. *Awotin v. Atlas Exchange Bank*, 295 U. S. 209; *Irving Trust Co. v. Day*, 314 U. S. 556, 561; *Standard Oil Co. v. Johnson*, 316 U. S. 481, 483. Under such circumstances it

would be both inappropriate and inexpedient for Federal courts to search out and apply decisions of state courts. The result might well be that a different decision would be reached in each state in which the validity or effect of a railroad collective bargaining agreement is challenged. It could end in such confusion of the rights of the employees and management of an interstate carrier as to materially hamper or virtually destroy carrier-wide collective bargaining as now practiced.

There is, moreover, no body of state law, either statutory or common law, which is dispositive of our case. Indeed, since the validity of the Mediation Agreement is to be determined by the application of the federal statute, there is no opportunity for the play of local law upon the point in controversy. In any event, there are no applicable statutes or decisions of Texas courts which bear on the matter.

III.

THE NORRIS-LaGUARDIA ACT DOES NOT NEGATIVE THE PROPRIETY OF GRANTING THE RELIEF SOUGHT.

The Norris-LaGuardia Act (29 U. S. C. §§ 101-115) limits in specified instances and circumstances the jurisdiction of Federal courts to grant injunctions in labor disputes. It also declares the public policy of the United States applicable to the interpretation of the Act and the jurisdiction and authority of Federal courts, as such jurisdiction and authority are therein defined and limited.

The first answer we make to the court's question is that since petitioner has not sought an injunction, the Norris-LaGuardia Act has no application to the relief here sought.

In addition we believe that neither the immunity from injunction established by that Act nor the public policy declared therein has the effect of depriving the court of jurisdiction to grant a declaratory judgment here.

For the purpose of this discussion, we may assume that a "labor dispute" within the meaning of the Act is shown.

Section 4[1] enumerates certain acts which are immunized from injunction.[2] Bearing in mind the maxim that a legislative affirmative description implies denial of non-described powers (*Continental Casualty Co. v. United States*, 314 U. S. 527, 533) and the rule that in the absence of a general grant of statutory power the detail in which particular powers have been specified precludes their extension to other subjects (*Peoria Ry. Co. v. United States*, 263 U. S. 528, 534-535), there appears to be no basis for a holding that an injunction cannot be granted with respect to any acts not designated in § 4. It is immediately apparent that § 4 does not prohibit an injunction to restrain an employer from negotiating or contracting with a representative other than the true one, for such bargaining is clearly not within the category of acts specified in § 4. *A fortiori*, a declaration of the illegality of such act is not prohibited thereby.

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[1] Section 4 in substance provides that no court of the United States shall have jurisdiction to issue an injunction in a labor dispute prohibiting any interested person from doing any of the following acts: (a) ceasing to work or to remain in any relation of employment; (b) becoming or remaining a member of any labor or employer organization; (c) paying to or withholding from any person participating or interested in a labor dispute certain benefits; (d) aiding persons during pendency of suit; (e) giving publicity to facts involved in the dispute by a method not involving fraud or violence; (f) peaceably assembling or organizing; (g) communicating intentions to do any of the above acts; (h) agreeing to do any of the above acts; and (i) urging any of said acts to be done.

[2] Section 5, in providing that no Federal court shall have jurisdiction to issue an injunction on the ground that any interested person is engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in § 4, may also be said to immunize from injunction such combinations or conspiracies. Section 3 declares "yellow dog" contracts to be unenforceable and not to afford any basis for granting equitable relief. These sections, however, are not relevant here.

The public policy declared in § 2 includes the statement that "it is necessary that he (the worker) have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference * * * of employers * * * in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining * * *." The policy thus declared is consistent with the declaration sought by petitioner, not contrary to it.

The purpose of the Act is to protect labor from interference by injunction in respect of designated activities which Congress considers should be free of such restraint, and to throw certain procedural safeguards around the issuance of injunctions respecting activities not thus immunized. An immediate object was to extend and make definite the provisions of the Clayton Act and to obviate the results of the judicial construction given that Act. *United States v. Hutcheson*, 312 U. S. 219, 234-236; *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U. S. 91, 101-102; *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552, 562. The report of the Senate Committee on the bill states:[1]

> "The primary object of the proposed legislation is to protect labor in the lawful and effective exercise of its conceded rights—to protect, first, the right of free association and, second, the right to advance the lawful object of association."

This report, after discussing the rights belonging to labor, and referring to the right of labor to organize for the purpose of securing agreements respecting rates of pay and conditions of work, as stated in *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S., at p. 570, declares:

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[1] Senate Report No. 163, 72nd Cong., 1st Sess., p. 10.

"It would be hypocrisy, however, to concede these rights to labor and then to prohibit any effective exercise of these rights by labor."

We submit that it would defeat the underlying purpose of the Norris-LaGuardia Act to construe the Act so as to prevent the issuance of an injunction or the entry of a declaration to secure to employees the full and complete enjoyment of their right exclusively to negotiate a collective agreement through their duly designated representative. As a practical matter, employees could be deprived of this right if the courts were prohibited from enjoining or declaring unlawful the act of an employer in treating with a false representative.

It is significant that the acts detailed in § 4 which are protected against interference by injunction—with exceptions not applicable to a case such as ours[1]—are the activities of labor unions or their members and not of employers. The declaration of policy contained in § 2 is drawn exclusively in terms of employee rights. So far as we are aware, the Act has never been applied to prohibit an injunction to restrain an employer from violating statutory requirements in collective bargaining. On the other hand, it has been construed by this Court to permit such injunctions. *Virginian R. Co. v. System Federation No. 40, supra*, pp. 540, 563.

While it may be considered that the issuance of an injunction in a case such as ours would be subject to the safeguards provided in § 7, since an injunction is not sought here it seems unnecessary under the issues presented to discuss compliance with those requirements. It may be

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[1] Certain of the acts enumerated in § 4 relate, or appear to be applicable, to activities of employers, as, for example, "Becoming or remaining a member • • • of any employer organization" [sub par. (b)]; and "withholding • • • unemployment benefits or insurance • • •" [sub par. (c)].

pointed out, however, that these requirements were considered in the *Virginian R. Co.* case, and found not to prevent the issuance of the injunction there granted. 300 U. S. at p. 563.

Finally, any apparent impediment found in the Norris-LaGuardia Act to the granting of the relief here sought appears to be removed by application of the principles that special statutes prevail over general ones (*State of Missouri v. Ross*, 299 U. S., 72, 76) and that a later statute will be deemed to supersede inconsistent provisions of an earlier statute (*United States v. California*, 297 U. S. 175, 188). The Norris-LaGuardia Act was enacted in 1932, and the amended Railway Labor Act and the Declaratory Judgments Act were enacted in 1934. As held in the *Virginian R. Co.* case (300 U. S. at p. 563) the provisions of the Railway Labor Act may not be rendered nugatory by the earlier provisions of the Norris-LaGuardia Act. It is also clear that the power of courts under Federal Declaratory Judgments Act to issue declaratory decrees not containing injunctions is not affected or limited by the earlier Norris-LaGuardia Act. This is particularly true when it is borne in mind that the Norris-LaGuardia Act is not intended to render unavailable any remedies in Federal courts other than injunctions. Frankfurter and Greene, *The Labor Injunction*, p. 220.

IV.

THE RIGHT OF CRAFT REPRESENTATION IS EXCLUSIVE IN THE DESIGNATED REPRESENTATIVE OF THE CRAFT.

Section 2, Fourth, of the Railway Labor Act (45 U. S. C. § 152) provides that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing," and that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Section 2, First and Ninth, of the Act imposes the obligation on a carrier to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to treat with the designated representative of the craft for the purposes of the Act. This duty to treat with the designated representative is a duty to treat exclusively with such representative.

In *Virginian R. Co. v. System Federation No. 40, et al.*, 300 U. S. 515, 548, this Court, in construing the Railway Labor Act, held that the provisions of the Act giving to the employees the right to organize and to bargain collectively through the representative chosen by a majority of the craft gave an exclusive right to the craft representative so designated. The Act, said the court, imposed upon the carrier "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

Respondents may contend, as was done in the Circuit Court of Appeals, that the Act imposes the duty on the Carrier to treat only with the true representative of the group asserting a claim, and hence only the negative duty to treat with no other person falsely claiming to be the true representative of such group, and that since the Firemen's Committee is admittedly the true representative of the firemen's craft the Act imposed upon the Carrier the

duty to treat with the Firemen's Committee when it was asserting a claim concerning rules and conditions governing the craft of locomotive engineers. Such argument apparently is that a "false representative" of the engineers' craft must be one who is claiming without warrant to be the representative of the engineers' craft; and that, although the Act prohibits the Carrier from dealing with such "false representative," if the false representative be the designated bargaining agent of some other craft seeking to invade the field of the engineers' craft, it is perfectly proper for the Carrier to deal with such representative on matters concerning the engineers' craft. Petitioner believes and contends that under the statute and the opinion in the *Virginian R. Co.* case, *supra*, as applied to the instant case, it is and was the duty of the Carrier to treat only with the Engineers' Committee as the true and only representative of the engineers' craft in all matters concerning rates, rules and working conditions governing the craft of locomotive engineers on the Carrier's railroad; and that it is and was the duty of the Carrier not to treat with any other person or group of persons concerning such matters, regardless of whether such person or persons were the representatives of a minority of the craft of engineers and admittedly interested, or the representative of the firemen's craft claiming to be interested in the matters affecting the engineers' craft, or admitted interlopers, as none of such parties would be the representative of the engineers' craft. In other words, there can be no true representative of the craft or class of locomotive engineers which has the right to negotiate with the carrier on any matters concerning rates of pay, rules and working conditions of the engineers' craft unless that representative is the duly designated representative of the engineers' craft chosen by a majority of that craft. We submit that such is the meaning and effect of the term "true representative" as used in the *Virginian R. Co.* case, *supra*. At page 548 of

the opinion the court approves[1] and quotes from the brief of the Government as follows:

> "When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make *with anyone other than the representative* a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), *whether the contract covers the class as a whole or a part thereof.* * * *
>
> If the majority of a craft or class has not selected a representative, the carrier is free to make with anyone it pleases and for any group it pleases contracts establishing rates of pay, rules, or working conditions." (Italics ours.)

There are admittedly two separate crafts or classes employed in engine service by the Carrier. There is the craft or class of locomotive engineers, which has been recognized by the Carrier as a separate craft or class of employees for all purposes of the Railway Labor Act (R. 21, 49), and the Engineers' Committee is the sole designated representative of said craft or class (R. 22, 46, 50). There is a separate craft or class of locomotive firemen employed by the Carrier (R. 25, 39, 50), and the Firemen's Committee is the designated representative of said craft or class (R. 26, 39, 50). The Firemen's Committee is not, and never has been, the representative of said craft or class of locomotive engineers on Carrier's railroad (R. 26, 50).

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[1] "We think, as the Government concedes in its brief, that the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employees, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent, but not as precluding such individual contracts as petitioner may elect to make directly with individual employees."

The Engineers' Committee contends that as the duly designated representative of said craft or class of locomotive engineers employed on the Carrier's railroad, and in accordance with the pronouncement of this Court in the *Virginian R. Co.* case as above set forth, it has the exclusive right to negotiate with the Carrier, and the Carrier has the duty to negotiate exclusively with it, as to the rules and working conditions governing said craft or class of locomotive engineers employed on said railroad, including all the rules which pertain to and govern entry into, remaining in, or removal from said craft, or which pertain to services to be performed as locomotive engineers by the members of said craft.

The holding in the *Virginian R. Co.* case above set out negatives any contention that there should or could be dual craft representation respecting the subjects covered by the Mediation Agreement which, as hereinafter discussed, are concerned solely with the rules and working conditions of the craft of locomotive engineers as such.

The decision in the *Virginian R. Co.* case gives paramount consideration to the express purposes of the Railway Labor Act. Among the purposes clearly expressed therein (Section 2 of the Act, 45 U. S. C. 152, General Purposes) are the following:

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * *
>
> (4) To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions. * * *"

The obligation of the Carrier under Section 2, Ninth, to treat with the representative of the craft or class "for the purposes of the Act" is to accomplish the "orderly settlement" of disputes concerning rates of pay, rules or working conditions of the craft and thereby "avoid any interruption to commerce." The construction placed on the

Act in the decision in the *Virginian R. Co.* case makes effective and realistic the express purposes desired to be reached by Congress. If the right of craft representation as to rates, rules and working conditions were not exclusively vested in the designated representative of a majority of each craft, instead of the Act facilitating the orderly settlement of disputes it would prevent such settlement and produce utter disorder and discontent. This, we submit, is well illustrated by the holding of the Circuit Court of Appeals in this case.

The Circuit Court of Appeals, although holding that the Railway Labor Act gives the right to the Engineers' Committee, as the representative chosen by the majority of the engineers' craft, to represent the whole craft, and that such right is exclusive as against anyone else seeking to represent the engineers' craft (R. 298), nevertheless decreed that the Engineers' Committee has not the exclusive right to confer and agree with the Carrier about the rules in issue here (R. 301). Although declaring (R. 301) that the Mediation Agreement was not binding upon the craft of engineers,[1] the Circuit Court of Appeals decreed that said Agreement was not illegal or void. The effect of this holding is to sanction the right of the Carrier to bargain with the Firemen's Committee concerning engineers' rules and to permit the agreement concerning engineers' rules, negotiated between the Firemen's Committee and the Carrier, to remain in effect. Thus, says the Circuit Court of Appeals in effect, an agreement made by the firemen's craft representative with the Carrier, concerning rules and working conditions of the craft of locomotive engineers, is not invalid or illegal or void, and hence is

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[1] In its opinion the Circuit Court of Appeals said (R. 299): "We cannot say the agreement [Mediation Agreement] thus reached violated any law and is void, but it is incomplete. The engineers are not bound by it, and the carrier is not protected against the discontent of the engineers, and the peace of transportation is not secured."

valid and effective, although it is incomplete and not binding on the craft of engineers. This holding is a contradiction in thought and legal effect. Since, as the court held, the Agreement is not binding upon the engineers' craft, the decree should have declared it to be invalid, certainly in so far as it governed engineers.

Under the pronouncement of the Circuit Court of Appeals there still remains, and this case presents for determination, the question of how far the exclusive right of collective bargaining by the duly designated representative of the craft extends. In other words, concerning what rules and working conditions, as such terms are used in the Act, does each designated representative of a craft have the exclusive right collectively to treat, bargain and contract with the Carrier? No decision has construed or defined such terms, but this Court clearly indicates in the *Virginian R. Co.* case, *supra*, that the scope thereof should be limited with respect to each craft, for the court therein (p. 549) holds that the injunction issued in that case conforms to the requirements of Section 2 of the Act, in that "it must be taken to prohibit the negotiation of labor contracts, *generally applicable* to employees in the mechanical department, with any representative other than" the duly designated craft representative. (Italics ours.)

V.

EXCLUSIVE REPRESENTATION OF THE CRAFT EXTENDS TO THE NEGOTIATION OF AND CONTRACTING FOR ALL RULES AND WORKING CONDITIONS GOVERNING ADMISSION TO OR REMOVAL FROM THE CRAFT AND GOVERNING SERVICES PERFORMED BY THOSE EMPLOYED IN THE CRAFT.

The reasons which support and justify the holding that the right of majority craft representation is exclusive are equally persuasive that it was the intent of Congress in enacting the Railway Labor Act to restrict the "rules and working conditions" concerning which the craft,

through its representative, has the right to contract. If the designated representative of each particular craft does not have the exclusive right to bargain with the Carrier within definable limits, and if the jurisdiction of a craft within which the exclusive right may be exercised is not limited, then disputes between various crafts will result in defeating the express purposes of the Act. It is a matter of common knowledge that for many years industrial strife has often been occasioned by jurisdictional disputes between labor organizations when one labor organization representing those employed in a particular craft seeks to overreach into a field of work occupied by another craft represented by another labor organization. Such cases illustrate the necessity, in the interest of industrial peace, of confining the collective bargaining right in each craft to subjects appropriately within its jurisdiction, for whenever two crafts seek to control a particular type of work, regardless of which of the crafts should properly control that work, industrial strife is sure to follow. Dual representation of craft matters, i.e., negotiation by the representatives of two separate crafts of matters properly belonging to one of the crafts, as well as dual representation within a craft, that is, by a majority and minority craft representative, is impractical, unfeasible, and will inevitably lead to disputes and strikes. Dual representation of any kind will render the Act ineffective. When Congress adopted the 1934 amendments of the Railway Labor Act and established majority rule for crafts for the purposes of the Act, we submit dual representation of all kinds was eliminated from railroad labor relations. Such, we believe, is the effect of the Act as applied in *Virginian R. Co.* case as pointed out under Point IV hereof.

With attention focused on the purposes of the Act, and with the foregoing considerations in mind, it is necessary, in view of the controversy herein, that the term

"rules and working conditions" as used in the Act, and the extent to which the exclusive right of representation applies thereto, be construed and defined. Petitioner contends that whether a rule or working condition is a proper matter for exclusive collective bargaining by the engineers' craft should be determined by a consideration of whether such rules or working conditions govern that craft and the services to be performed therein. As applied to this case, pertinent matters to be considered in that connection are such as the following: Is the rule one which governs the employee while engaged in performing services as an engineer? Is the rule one which relates to the amount of work which may be performed by an engineer? Is the rule one which relates to the number of persons who at a particular time may be permitted or required to work as engineers? Is the rule one which governs admission to the craft or removal from the craft? Crystallized into affirmative form, the rule could be stated thus: The exclusive right of the duly designated representative of a craft to bargain collectively extends to such rules and working conditions as pertain to entry into or removal from the craft and to the services to be performed by members of such craft.

The Circuit Court of Appeals for the Ninth Circuit in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Company v. Southern Pacific Company, et al.*, 132 F. 2d 194, which case is under review by this Court in Nos. 27 and 41, October Term 1943, in a fact situation substantially the same as here presented, has correctly stated, we submit, the proper construction of the Railway Labor Act in its application to the situation presented in the case at bar. In that case, as here, the controversy was over the right of the engineers' craft representative to negotiate and contract exclusively concerning rules governing the engineers' craft, including entry of

engineers into the craft and removal of engineers from the craft.[1] That court there stated (132 F. 2d 205):

> "It is our opinion that the [Railway Labor] Act contemplates that the cleavage of the powers of the firemen's and engineer's crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other."

That construction of the Act results in an understandable, clear-cut, workable rule. It places the dividing line at the point of "entry," from which it would necessarily follow that all rules governing the craft, or the performance of service within the craft, at and above the point of entry thereto, and, likewise, at and above the point of leaving the craft, are within the exclusive jurisdiction of the engineers' craft representative.

Such construction accords fully with the decision of this Court in the *Virginian R. Co.* case. It recognizes the right of the representative of the engineers' craft to make all the rules governing the craft or the members thereof in every particular where the rules governing the craft as a craft are involved. It recognizes the right of the craft representative to negotiate exclusively for the rules which govern admission to the craft, remaining in the craft, and leaving the craft, and hence the exclusive right to negotiate the rules governing performance of services by those who

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[1] The Ninth Circuit Court of Appeals applied this line of demarcation to the Questions and Answers of Firemen's Article 37, Section 15, in decreeing that the Questions and Answers are valid only in so far as they relate to the rights of firemen as such, and that they are invalid in so far as they relate to the entry of firemen into the craft of engineers (132 F. 2d at 206). It likewise was applied to Article 43 of the Firemen's agreement by limiting the application of said article "to conditions under which demoted engineers enter, remain in, and leave the firemen's craft," and held that this article was invalid in so far as its provisions sought to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists (132 F. 2d at 205).

are members of the craft. It likewise recognizes the right of the representative of the firemen's craft to negotiate and contract similarly concerning the firemen's craft.

In contrast thereto, the decision of the Fifth Circuit Court of Appeals in the instant case holds that the matter of entry of engineers into the engineers' craft from employment in the firemen's craft is a matter of "concern" of the firemen's craft, and that the matter of entry into the firemen's craft from employment in the engineers' craft is the "concern" of the engineers' craft; by reason whereof the Engineers' Committee does not have the exclusive right under the Act to confer and agree with the Carrier upon the rules governing entry into or removal from the engineers' craft. Likewise, under this holding, the Firemen's Committee does not have the exclusive right to confer and agree with the Carrier upon the rules governing entry into or removal from the firemen's craft.

The construction of the Act as announced in the *Southern Pacific* case, *supra*, gives the exclusive control of the rules governing the engineers' craft to the engineers' craft representative. The construction of the Act announced by the Fifth Circuit Court of Appeals in the instant case gives at least equal control of the rules governing the engineers' craft, as set out in the Mediation Agreement, to the firemen's craft representative. If the Engineers' Committee does not have the exclusive right to make the rules determining when and whether an emergency engineer is needed, when men are to be added to the working lists of engineers, when men are to be removed from the working lists of engineers, and what engineer, holding seniority as such under seniority rules agreed upon between the Carrier and the engineers' craft representative, is to be called for service as an emergency engineer, but such matters are also for negotiation and contracting by the Firemen's Committee, then the designation of a representative of the engineers' craft by a majority of that

craft which shall be the representative of the craft for the purposes of the Railway Labor Act, has become a designation of dubious purpose and value.

As indicated above, the construction here urged by petitioner would provide an understandable and workable rule. It would define the rights of each craft, could be readily applied without further judicial interpretation, would minimize jurisdictional disputes with the resulting ill will between craft and craft, and carrier and crafts, and accomplish the purposes of the Act. Such a construction is fair, just and equitable to each craft. No craft would thereby have justifiable cause for complaint, as it would be permitted thereunder to bargain collectively as to all matters pertaining to craft membership and the labor *then being performed* by its members. No craft, nor representative thereof, should desire or be permitted to contract concerning the service then being performed by another craft, or to set the terms of admission to or removal from such craft, as was done in this case, thereby usurping the functions of such other craft and denying to the members thereof true representation through their designated bargaining agent.

VI.

THE SUBJECT MATTER OF THE MEDIATION AGREEMENT IS CONCERNED ONLY WITH RULES GOVERNING THE ENGINEERS' CRAFT.

On October 1, 1918, an agreement known as Engineers' Schedule was entered into between the Carrier and the Engineers' Committee (Plaintiff's Exhibit 1, R. 96, 97-104) concerning rates of pay, rules and working conditions governing the engineers' craft, including, among others, the rule governing mileage regulations (Art. 44, R. 102-104), and the rule providing that engineers in pool service shall run first in first out (Art. 10, R. 97-8). The schedule recognized the Engineers' Committee as having the general power and authority "to make and interpret contracts, rules, rates and working agreements for locomotive engineers" (Art. 38, R. 99). The Engineers' Committee, as the recognized representative of the engineers' craft, has from time to time entered into agreements with the Carrier respecting additional rules or working conditions or respecting modifications or interpretations of existing rules. Among such are the various agreements set forth in the statement herein dealing with the calling of demoted engineers to particular service as emergency engineer, the regulation of the engineers' working lists, and the filling of vacancies in engineers' pool service at Smithville, Texas when the engineers' extra board was exhausted.

1. Item 1 of the Mediation Agreement purports to control the designation of demoted engineers to be called for service as emergency engineers.

On December 14, 1938 and May 1, 1939, the Engineers' Committee entered into agreements (Plaintiff's Exhibits 2-I, 2-J, R. 108, 116-8, quoted in the Statement herein, at p. 6, *ante*) which provided, in substance, that when an engineer could not be secured from the engineers' extra board and the use of an emergency engineer would be

necessary, the senior available demoted engineer, having his home terminal at the point where the emergency service was required or required to begin, should be used, unless such senior available demoted engineer was junior in engineers' seniority to the fireman (demoted engineer) then engaged in firing the engine on the assignment at such point (which was away from the latter's home terminal) in which event such fireman should be used as engineer on the remainder of the trip.

The practical operation of these agreements can best be explained by illustration: A, an engineer with ten years seniority as such, and B, a demoted engineer with six years seniority as engineer, are assigned as engineer and fireman, respectively, on a run from Denison, Texas, to Waco, Texas, on the Carrier's railroad. Both have home terminals at Denison. Upon arrival at an intermediate point, such as Dallas, A becomes ill and is required to "lay off." C, D and E, employees of the Carrier, with engineers' seniority, are in Dallas at the time. C has nine years seniority as engineer, and his home terminal is in Denison. D has eight years seniority as engineer, and his home terminal is in Dallas. E has five years seniority as engineer, and his home terminal is in Dallas. Although C is available and is the senior engineer, he would not be called, because Dallas is not his home terminal. D, if available, would be called to complete the run, as he is the senior available engineer with home terminal at Dallas. If D were unavailable, B, the fireman (demoted engineer) then engaged in operating the engine on the assignment in question, would be used as engineer, as he is senior to E.

Item 1 of the Mediation Agreement of December 12, 1940 (R. 27) changes the agreements of December 14, 1938 and May 1, 1939 in their entirety, so that, in all instances, the senior available demoted engineer will be called to perform the emergency service regardless of whether his home terminal is located at the point where the service is

required or required to begin. Thus, in the illustration above set forth, C would be called, if available; if unavailable, D would be called. If both C and D were unavailable E would be called, because B would be considered unavailable, as he is engaged in "firing" on an assigned run. In the latter instance the employee with the lesser engineers' seniority would be the engineer, and the employee with the greater engineers' seniority would be the fireman.

It is immediately obvious that the only services involved, in both the rule as contained in the agreement of December 14, 1938 and May 1, 1939, and the rule as contained in Item 1 of the Mediation Agreement, are those of engineers. These agreements do not in any wise concern the performance of any services as fireman or the performance of any services under rules governing the working conditions of the firemen's craft. They call for an exercise of engineers' seniority, a matter for regulation only by the engineers' craft and the Carrier.

2. Item 3 of the Mediation Agreement purports to determine the question of whether and when the use of an emergency engineer is necessary. It purports to prevent the use in engineers' service of an engineer regularly employed on the engineers' working list and to require the designation of an emergency engineer.

Another agreement entered into between the Engineers' Committee and the Carrier on May 14, 1929 (Plaintiff's Exhibit 2-M, R. 108, 121, quoted in the Statement herein, at p. 11, *ante*) provided, in substance, with reference to engineers' pool through freight service, that when the engineer on the pool board who was "first out" and who ordinarily would have been assigned to the next freight run, "lays off," and no extra engineer is available, instead of using a demoted or "emergency" engineer to fill this vacancy, the next engineer in order on the engineers' pool board who thus moved up to the position of

"first out" from the position of second out, would be used. For example: Suppose there are ten engineers on the pool through freight board and all of them are out on runs except engineers A, B and C, and under the "first in first out" rule they are listed on the pool board for the next assignment in the following order: A, first; B, second; C, third. A is called for an assignment but is ill and compelled to lay off. B is thus moved up to the first position as first out. No extra engineers are available. Instead of calling, as an emergency engineer, the senior demoted engineer who would have been called, as provided in the agreements of December 14, 1938 and May 1, 1939, aforesaid,[1] under the agreement of May 14, 1929, B, the next in order on the pool board and the man then first out, would be assigned to fill the vacancy. Item 3 of the Mediation Agreement is in direct conflict with the agreement of May 14, 1929 between the Engineers' Committee and the Carrier, and places in effect the rule set forth in Item 1 of the Mediation Agreement, so that, instead of B being assigned under the circumstances set forth above, the senior available demoted engineer, without reference to the location of his home terminal, would be called to fill the vacancy. As hereinbefore stated, this rule was an exception to the rule governing the use of emergency engineers as provided in the agreements aforementioned of December 14, 1938 and May 1, 1939, and was in effect at only one point on the Carrier's railroad, namely, on the Smithville, Texas, district. There was a special reason for having this exception to the general rule in effect at this point, as explained by the General Chairman, which was that there were so many regular engineers laying off at times when extra engineers were not available, resulting in the calling of emergency engineers, the regularly assigned engineers on the pool board were not making even the minimum mileage per-

[1] Referred to at p. 52, *supra*.

mitted by the schedule agreement; and it was found that, if all permissible mileage was worked by the assigned engineers, the working list could be maintained, or, in some instances, if the maximum mileage should be exceeded thereby, the list could be increased by the addition of another man (R. 146-7). Moreover, as the General Chairman further testified, it was a "literal application of the 'first in first out' rule" (R. 157). It is of particular significance that in making this agreement concerning the engineers to be used at Smithville, the Carrier and the Engineers' Committee had simply determined the question of whether it was necessary to call an emergency engineer from the ranks of demoted engineers, and had agreed that under the circumstances the calling of an emergency engineer was not necessary, as the work could be performed by an engineer regularly assigned to the engineers' working lists.

Item 3 of the Mediation Agreement is a glaring example of interference by the firemen's craft in a matter that is of no concern to anyone but engineers—a plain case of interloping. Why should a representative of the firemen's craft be permitted to have anything to say on the question of whether it is necessary to call an emergency engineer? Under rules and regulations in force, engineers working on the engineers' working lists are permitted to make mileage per month between minimum and maximum limitations (Plaintiff's Exhibit 1, Art. 44, R. 102-3), and although there was abundant reason for the Engineers' Committee to negotiate its rule for setting up the next pool engineer to enable the engineers regularly assigned to the pool to make the permissible mileage, this rule was swept away by Item 3 of the Mediation Agreement, which requires that an emergency engineer must be called to fill the vacancy regardless of whether or not the assigned engineers are making the mileage they are entitled to. Under the rules in force, neither the Firemen's Committee nor any man who was back firing could have any cause for com-

plaint for the rule at Smithville, unless the maximum mileage limitations of engineers were being exceeded, and, of course, even in such case they would not have the right to negotiate a new rule on the subject. One of the results of the application of Item 3 of the Mediation Agreement may well be that in the course of a month pool engineers would not make as much mileage as they were entitled to make under the mileage regulations and some of them might even go below the minimum. But irrespective of how individual engineers may be affected thereby, the net effect of Item 3 of the Mediation Agreement is that the firemen's craft representative by entering into this rule with the Carrier is regulating and controlling the mileage to be made by those in the engineers' craft. We submit that this is a matter with which the firemen's craft has no legal right or concern but is solely and exclusively for negotiation between the engineers' craft representative and the Carrier.

3. Item 2 of the Mediation Agreement purports to control the regulation of the working lists of engineers.

Item 2 of the Mediation Agreement places in effect an earlier agreement between the Engineers' Committee and other craft representatives and the Carrier entered into by letters of March 28 and March 29, 1923 (R. 29-31, quoted in Statement herein, pp. 8, 9, *ante*), which provides, in substance (as applicable to engineers), that the working lists of engineers will be handled by the Carrier's Superintendent under existing rulings and agreements, and that if conflicts should exist they would be worked out by conferences between the Carrier and the General Chairman of the Engineers' Committee. Engineers, in the performance of their services as such, are assigned to working lists, the number of men on the respective lists being controlled by the mileage limitations for the engineers' craft contained in Article 44 of the Engineers' Schedule (Plaintiff's Exhibit 1, R. 96, 102-104) and the fluctuation

in the Carrier's business. On the 1st and 15th of each month, or as soon thereafter as practicable, the mileage checks are examined and this and existing and anticipated future operations of the Carrier determine whether or not engineers will be added to the engineers' working lists or taken therefrom or whether no change need be made, so that the minimum mileage limitations provided for in the schedule can be obtained by the engineers on the working lists or the maximum mileage limitations shall not be exceeded (R. 147, 149). These working lists control the number of employees who will perform service as engineers. The firemen have their own separate working lists and do not appear on the lists of engineers (R. 142, 148). It is the contention of the petitioner that adding an engineer to or removing an engineer from the engineers' working lists is a matter exclusively within the jurisdiction of the engineers' craft. Likewise, adding demoted engineers to or removing such engineers from the firemen's working list is a matter exclusively within the jurisdiction of the firemen's craft. This must necessarily be so, because men are selected from the engineers' working lists to run engines, that is, to perform services as engineers, while men are selected from the firemen's list to fire engines, that is, to perform services as firemen. The handling of the working lists is one of the most important functions performed by the engineers' craft representative, because such regulation determines the monthly mileage that can be made by the members of the craft and thus the amount of their earnings.

Item 2 of the Mediation Agreement was not followed by a request of the Carrier for a change or modification of the agreement entered into between the representatives of the four organizations and the Carrier under dates of March 28 and March 29, 1923, as above set forth (R. 29-31), but was followed by a changed application of the latter agreement, in that the Carrier is now requiring concur-

rence of the Firemen's Committee in the regulation of the engineers' working lists. This is contrary to the intention of the 1923 agreement and contrary to all applications which followed the making of that agreement in so far as the engineers were concerned, because there had been no joint handling of engineers' working lists between the representative of the engineers' and firemen's crafts either before or after the making of the 1923 agreement. The undisputed testimony of the General Chairman of the Engineers' Committee is that, so far as the engineers were concerned, the lists were to be handled in accordance with the agreement then in effect between the Carrier and the Engineers' Committee (R. 168-9, Plaintiff's Exhibit 2-P, 2-Q, R. 108, 126-128.) It is to be noted that no agreement between the Engineers' Committee and the Carrier has ever provided for the joint handling of the working lists of engineers by the Engineers' Committee and the Firemen's Committee. The further undisputed testimony of the General Chairman on this matter is that prior to the 1923 agreement the local chairman of the Engineers' Committee handled the regulation of the engineers' working lists, and that after that agreement the Carrier handled the lists, through the co-operation of the local chairman of each organization, without joint handling between the Engineers' and Firemen's Committees, that is, so far as engineers were concerned, the regulation of the engineers' working lists was handled by the Carrier through the co-operation of the local chairman of the Engineers' Committee; that there had never been any agreement between the Carrier and the Engineers' Committee for the Carrier to discontinue handling the regulation of the working lists but that the handling thereof had drifted from the Carrier to the local chairmen of the organizations, each local chairman handling his own list (R. 157-9), that is, the engineers' local chairman handling the engineers' list, and the firemen's local chairman handling the firemen's list.

The effect, therefore, of Item 2 of the Mediation Agreement, so far as engineers are concerned, has been either a violation of the 1923 agreement with respect to the regulation of the engineers' working lists, or a modification of the practice concerning such regulation in effect between the Carrier and the Engineers' Committee, or both, and the least that could be said with respect to the effect of Item 2 of the Mediation Agreement is that it changed an existing practice, concurred in between the Carrier and the Engineers' Committee. The changing of a practice in the regulation of the engineers' working lists which had been agreed upon, whether expressly or by acquiescence, between the Carrier and the Engineers' Committee, we submit, is not a matter for collective bargaining by the firemen's craft representative; but is a matter for collective bargaining solely between the Carrier and the Engineers' Committee.

No sound reason can be advanced, we believe, for permitting the representative of the firemen's craft to have a voice in the regulation of engineers' working lists which are governed by rules concerning minimum and maximum limitations in the engineers' craft agreement with the Carrier. If concurrence of the firemen's craft representative is required in the regulation of the engineers' working lists, it is not only conceivable but probable, and undoubtedly actual, that, when the mileage situation is such that a demoted man should be added to the engineers' working list, such concurrence will be forthcoming immediately, because the demoted man will be advanced from the firemen's working list, but when, under the mileage regulations, the demotion of a man from the working lists of the engineers is called for, such concurrence may and doubtless will be unduly delayed, since, under the firemen's rules governing return to the firemen's working list, such demoted man would return to the firemen's working list. Such is human nature and craft rivalry.

4. That the subject matter of the Mediation Agreement concerns only rules involving services as engineers is confirmed by the statements of the Carrier. The apparent change of Carrier's position was induced by threat of a strike.

As shown in the statement of facts, the Carrier in 1939 was engaged in a controversy with the Firemen's Committee concerning the same matters which later became the subject matter of the Mediation Agreement, namely, the use of emergency engineers at Smithville, Texas (Plaintiff's Exhibit 3, R. 174, 176), the rule for calling emergency engineers under the agreement of December 14, 1938 (R. 177), and the broad question of regulating engineers' working lists generally (R. 177). The Carrier at that time sought the services of the National Mediation Board, and in the letter invoking the services of the Board the Carrier clearly and distinctly stated its position on the type of service involved and its understanding of duties in connection therewith under the Railway Labor Act. Its position on these matters was that it was "obvious" (R. 178): (1) that the class of service involved was that of locomotive engineers, (2) that the Firemen's Committee sought to have the Carrier adopt rules representing the views of that Committee for the handling of locomotive engineers, (3) that the Carrier was being asked by the Firemen's Committee to treat with it as (at least partially) the representative of the class of locomotive engineers for which class the Carrier understood the Engineers' Committee was the "accredited and the exclusive representative."

The Carrier had taken the same position on three previous occasions, once in a letter dated July 6, 1938 to the Secretary of the National Mediation Board, once in a letter dated December 14, 1938 to the Chairman of the Firemen's Committee, and again in another letter to the Chairman of the Firemen's Committee dated April 11, 1939, all of these

letters being concerned with the controversy aforementioned between the Carrier and the Firemen's Committee. Said the Carrier in the letter of July 6, 1938:

> "The service involved in the dispute is not service of locomotive firemen; it is service of locomotive engineers" (R. 185).

And again in the same letter:

> "The firemen's organization is seeking to apply the interpretation of the organization to the situation in question, whereas the *engineers'* organization, which is the accredited representative of the locomotive engineers as a class, denies the right of the firemen's organization to interfere with the interpretation, application, etc., of the *engineers'* agreement" (R. 186).

In the letter of December 14, 1938, the Carrier said:

> "What we consider our obligation is simply stated. That is, we are obligated to recognize the Brotherhood of Locomotive Engineers as the accredited and exclusive representative of locomotive engineers as a class" (R. 187).

and further said that while the Carrier deplored the lack of agreement between the two organizations, it nevertheless felt that its "obligation under the Railway Labor Act is as outlined in the foregoing" (R. 187).

In the letter of April 11, 1939, the Carrier said:

> "In any case, however, we consider it our obligation, imposed upon us by statute, to treat with the engineers' organization as the accredited representative for the services of men used as engineers, the same as we consider the firemen's organization in connection with the services of men used as firemen; and we have not and do not now consider it lawful or proper for us to enter into an understanding or agreement with an organization representing one class to cover the handling of men used in another service, for which there is an accredited representative for that class" (R. 189).

And again

> "* * * We shall also recognize what we consider the exclusive right of the engineers' organization to legislate for locomotive engineers as a class * * *" (R. 189-190).

The foregoing statement of the Carrier's position, we believe, represents the carefully considered judgment of the Carrier that the type of service involved in the rules agreed upon in the Mediation Agreement relate solely to service as engineers and that it was its duty under the Railway Labor Act to make agreements only with the Engineers' Committee as the representative of the craft of locomotive engineers concerning those matters. There is nothing in the record in this case to indicate that the Carrier has changed its position and judgment as to the type of service involved or as to its duties under the Railway Labor Act in connection therewith. True, the Carrier did enter into the agreement with the Firemen's Committee dealing with these same matters contrary to the position previously stated. There is nothing in the record, however, to show that the Carrier entered into this agreement because it considered its position formerly taken was legally incorrect. On the contrary, the record conclusively shows that the Carrier entered into the Mediation Agreement with the Firemen's Committee solely as the result of the threat of strike by the firemen's organization if it did not enter into the agreement. There can be little doubt that the Carrier, in disregard of what it clearly believed to be its duty under the law, entered into the Mediation Agreement and agreed to cancel the agreements then in effect with the Engineers' Committee, for the purpose of avoiding a strike, or the threat of strike, by the firemen (R. 201), and because the Carrier was "up against the situation" (R. 194) of the threatened strike, leaving the consequences to an attempt "to work the matter out with the engineers" (R. 194).

We submit that the views of the Carrier as expressed

through its Vice President and General Manager, as the conclusion of those engaged in practical railroad operation, that the service involved in the rules which make up the subject matter of the Mediation Agreement relate only to service to be performed by men in the craft of locomotive engineers, a type of service distinct from that of locomotive firemen, should be most persuasive. While we have no doubt that the Carrier's conclusions as to its duties under the law in respect of the matters, which later became the subject of the Mediation Agreement, were reached after careful consideration of both its operating and legal officers, the Carrier's views of its duty under the law are, of course, not controlling upon the Court. We submit, however, that the Carrier's views as to its duty under the Railway Labor Act, as quoted in this point, were in accord with the decision of this Court in the *Virginian R. Co.* case, and were correct.

VII.

THE DECISION OF THE CIRCUIT COURT OF APPEALS APPROVING DUAL REPRESENTATION VIOLATES THE RAILWAY LABOR ACT.

1. The separateness of the engineers' and firemen's crafts is not affected by the "transfer" of men from one craft to the other.

There is confusion in the decree of the Circuit Court of Appeals in respect of what it calls the "rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa" (R. 301). Because such rules are said to be of concern to both crafts (R. 299), the court concludes that the Engineers' Committee does not have the exclusive right to confer and agree about the rules in question (R. 300). This conclusion, while apparently recognizing that there are two separate crafts, fails completely to recognize that each craft has its own jurisdiction, and that neither craft may invade the jurisdiction of the other. A "transfer" from fireman to engineer

is an entry into the engineers' craft for the purpose of performing services as an engineer. The conditions of such entry are for agreement solely between the Engineers' Committee and the Carrier. A "transfer" from engineer to fireman is an entry into the firemen's craft for the purpose of performing services as a fireman. The conditions of such entry are for agreement between the Firemen's Committee and the Carrier. Thus in "transferring" from one craft to the other two distinct and separate controls are involved, but the decree fails to distinguish between them.

The process of "transfer" of employees from the working lists of one craft to those of the other may be described as follows. As heretofore shown in the statement of facts, there are mileage regulations in effect agreed upon between the Carrier and the Engineers' Committee governing the number of miles engineers may run per month. Thus, in passenger service they are permitted to make between 4000 and 4800 miles per month, and in pool freight service between 3200 and 3800 miles per month. When engineers on a given working list average more than the maximum, additional men are placed on the list. When they average less than the minimum, men are removed from the list. This addition to or removal from the lists is necessarily dependent upon the fluctuations in the amount of business available. When men are added to the working lists of engineers they are advanced from the ranks of the firemen in accordance with their seniority standing on the engineers' seniority roster, and when engineers are removed from the working lists of engineers they are demoted therefrom in the reverse order of their seniority standing as engineers on the engineers' seniority roster. Men so demoted from the working lists of engineers with least seniority (usually the extra lists, R. 155), return to the working lists of firemen in accordance with their seniority standing

on the firemen's seniority roster and in accordance with rules agreed upon between the Carrier and the firemen's craft representative.

There is no basis for giving to the Firemen's Committee any right to regulate the terms or conditions and rules governing entry into the engineers' craft because those who enter the engineers' craft come from the firemen's craft. Men entering into service in any craft must come from some place outside of the craft. Yet that fact, so far as it has ever come to our attention, has never required or permitted the source from which such men come to the craft to dictate or make the rules under which they may enter the craft. That the particular source from which men enter the engineers' craft is the firemen's craft should not, and does not, change the situation so as to permit the firemen's craft to dictate the terms under which they may do so. There is, and always has been, a dividing line between the two crafts, and when this line of demarcation is observed there can be no such confusion as arises from the decree of the Circuit Court of Appeals. That line of demarcation, as shown in the case of *General Committee of Adjustment, etc. v. Southern Pacific Co., et al., supra*, at p. 205, gives to the Engineers' Committee the exclusive right to negotiate the rules and conditions under which men enter the engineers' craft after being promoted from the firemen's craft; and gives to the Firemen's Committee the corresponding exclusive right to negotiate the rules and conditions under which men enter the firemen's craft after being demoted from the engineers' craft.

2. The "ebb and flow" of men between the two crafts does not establish a "field of overlapping interest" between the crafts, or affect the bargaining rights of the crafts.

In the court below it was contended by the Firemen's Committee that there was a field of overlapping interest between the crafts of engineers and firemen which gave that Committee the right to bargain respecting engineers' rules. It was sought to base this contention, apparently, upon the situation hereinabove mentioned of the movement of individual employees from one craft to the other in the application of the mileage regulations. We think this contention is erroneous and of no significance.

The two crafts do not overlap. Their functions are entirely different; an engineer "runs," and a fireman "fires," the locomotive. The respective duties and responsibilities of the two crafts remain constant, and are, and always have been, separate and distinct. The *personnel* of the craft may and does change by reason of death, resignation, the application of mileage regulations in the fluctuation in business or other causes, but there are no changes in the duties and status of the respective *crafts* of engine employees. Overlapping, so-called, is a condition that relates to the individual, not the crafts. The movement or "ebb and flow" of men from one craft to the other does not affect the separateness of and the clear distinction between these established and recognized crafts.[1] An ebb and flow exists only in the case of comparatively few men, that is, the youngest men in point of seniority on the engineers' working list and the oldest men in point

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[1] In its brief, page 4, in the Circuit Court of Appeals, the Carrier made the following statement: "'Craft of firemen' and 'craft of engineers' are easily those of misunderstanding. Neither of these terms refers to a group of men qualified for work and employment of this kind but means, respectively, 'the firemen *then* working as such' and 'engineers *then* working as such' for the defendants. The term 'craft' whenever used, means persons actually employed and engaged in performing the work described."

of seniority on the firemen's list, and it occurs only when these men move up or down from one craft to the other. In times of prosperity the greater movement is upward and in times of depression the greater movement is downward. So, while the amount of work available for engineers, and consequently the *number* and *identity* of men employed as such, may vary from time to time, all of such work belongs to the engineers' craft. And all of the services required to handle it are to be performed by engineers. We submit that the division of such work among engineers cannot properly be governed by firemen's rules and regulations, and, similarly that the division among the firemen of the work available to the firemen's craft cannot properly be governed by engineers' rules.

3. Regardless of the interest of individual employees or groups of employees in a dispute, only the representative chosen by the majority of a craft may treat and contract with a carrier concerning rules governing the craft.

The decision of the Fifth Circuit Court of Appeals appears to be based, in part at least, upon a misconception of the firemen's "interest" in the rules governing the engineers' craft. In the opinion (R. 299) the court refers to and quotes § 2, Second, of the Act, reading as follows:

> "Section 2, Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof *interested in the dispute.*" (Emphasis by the court.)

From a consideration of this section the court proceeds to announce the conclusion, later carried into the decree as aforementioned, that the rules for transferring employees from the craft of firemen to the craft of engineers, or vice versa, are matters of such interest or concern to both crafts

that either or both may negotiate the rules governing entry into one craft or the other.

We first point out that, assuming *arguendo* that firemen have an interest in the rules providing for "transfer" of men from one craft to the other, it does not follow that such interest confers upon the Firemen's Committee the right to say when and under what conditions such men will enter or leave the engineers' craft. It may be that the assignment of firemen to engineers' jobs will improve the relative standing or assignment of many men on the firemen's lists, and will make room for the employment of additional firemen; and that the acceptance into the firemen's ranks of demoted engineers will adversely affect the standing of other firemen and result in junior firemen being furloughed. But the effect of such transfers is without legal significance where, as here, the crafts involved in such transfer are separate and distinct crafts.

The situation fundamentally is no different from that prevailing where there is no ebb and flow between crafts. Thus, in the case of the craft of machinists employed by a carrier, when the amount of work available for this craft decreases, the youngest men in point of seniority, under rules in force, may be required to leave the craft and be furloughed out of the craft. So, in the case of the engineers' craft, when the amount of work decreases, under rules in force, the youngest engineers in point of seniority are demoted or furloughed out of the craft. In both cases the removal from the craft is brought about as the result of the rules of the craft from which the removal is made. In a furloughed machinist's case, there probably is no other craft in which he holds seniority and to which he may go. He is out of a job. In a demoted engineer's case, however, he may be out of a job if he is a hired engineer, or he may return to work as a fireman in accordance with his fireman's seniority. But if he does return to firing service it is with the consent of the firemen's craft and because the rules of

that craft so provide. Similarly, the return of the demoted engineer to service in the engineers' craft is by the consent of the engineers' craft and in conformity with its rules. The fact that the firemen's craft may be interested in the conditions under which such demoted men are required to *leave* the firemen's craft—or in the promotion or transfer of firemen to the craft of engineers—because of the effect which such movement has upon the working lists of firemen, does not confer upon the firemen's craft the right to regulate the conditions under which the engineers' craft will accept such men. It is our position that an engineer upon demotion enters the firemen's craft in accordance with rules which govern that craft, and that likewise a promoted fireman enters the engineers' craft in accordance with rules governing that craft; that each craft should determine for itself the rules under which men enter therein.

Neither the firemen nor the firemen's craft have any interest in engineers' rules which entitled the firemen's craft representative to treat or contract with the carrier concerning engineers' rules. It is natural that each individual fireman has a personal ambition or aspiration to become an engineer and to obtain the higher pay and higher grade of service enjoyed by the senior craft (R. 284). In that sense the members of the firemen's craft had an interest or concern in the three matters covered by the Mediation Agreement. On the same basis, there would be scarcely a single rule in the entire engineers' schedule as to which individual firemen would not have an interest, and there would be scarcely a rule in the firemen's schedule as to which individual engineers would not have an interest. Such interest, however, in neither case is a matter of craft interest, and it is not a matter of present interest to the individual. It concerns the future—an interest in what the individual members of the craft may be doing in the future. For example, a demoted engineer who may have been working as a fireman for

months or even years would have a prospective interest in the rates of pay for engineers and in the rules affecting the working conditions of engineers as contained in the engineers' schedule, because at some future time he might be called for service as an engineer. Similarly, substantially all of the engineers (except those with very high seniority) would be interested in the rules in the firemen's schedule relating to pay or working conditions, because as the result of changing conditions of traffic at some future time they might be demoted to the firemen's craft. It is obvious, however, that such individual, personal interest cannot vest in the members of the firemen's craft the right to regulate, through the firemen's craft representative, the working conditions of locomotive engineers any more than such interest of the engineers in the working conditions of the firemen could vest in the engineers' craft the right to regulate the firemen's working conditions. It is merely a play on words to say in one breath that the designated representative of a craft has an exclusive right to treat, to bargain collectively, and to contract for the craft, and in the next breath take that right away by saying that such right is limited by the personal interests or desires of the members of another craft. The holding in the *Virginian R. Co.* case cannot be circumvented in such a manner. If it can, dual representation will result.

If the dual representation doctrine of the Circuit Court of Appeals is accepted it would completely nullify the statutory right of exclusive *majority* craft representation. It would give to the representative and the members of the firemen's craft a measure of control over working conditions of locomotive engineers which is denied to many full time engineers. An illustration will at once make this clear. Assume that there are 500 full time members of the engineers' craft; that a majority of 300 elect the craft representative, who enters into an agreement with the carrier that no engineer will be permitted to run more than 4800

miles in passenger service in one month. Assume that the 200 minority engineers oppose such rule. It cannot be denied that the 200 in the minority are "interested" in the amount of permissible mileage, but they must abide by the rule adopted by the majority. *If the firemen's craft is permitted to contract as they have done in this case, that craft and its representative could control the regulation of the engineers' mileage through negotiation and contract with the carrier, and thus deprive the majority of the engineers' craft of the right of exclusive representation.*

In the illustration given no one would contend that Section 2, Fourth, of the Act did not prohibit the 200 minority engineers from collectively contracting with the carrier on the subject involved or on any other subject. Congress expressly excluded the minority members of the craft from collectively bargaining with the carrier, although the latter have an actual *present* interest in the subject matter of a dispute. Did Congress at the same time and in the same statute intend to grant the representative of another craft whose members at most have only a *future* interest in the same controversy the right to bargain and contract thereon with the carrier? If individual "interest" in the rule or regulation governs the right to contract with the carrier, then the question is presented as to the extent or kind of interest which should be required. Is a future interest, however remote, sufficient, or should it be required that the interest be an actual present interest? But if individual interest, of whatever degree, be a standard of judging the right to bargain collectively with the carrier, we are confronted with the proposition that there would ever be present in the minority members of the craft, whose services were governed by the rule or working condition involved in the dispute, an interest at least as great as that of any persons not presently working in the craft. *Yet these minority members, with a co-extensive or greater interest, are barred from any right of contracting with the carrier.*

That both the carrier and the employees be interested in the dispute is a prerequisite to the right of their representatives to confer, consider, and negotiate under § 2, Second, of the Act. But this section is not susceptible of the construction placed on it by the Circuit Court of Appeals (R. 299, 132 F. 2nd, 94) to the effect that because the men employed in the firemen's craft individually are or claim to be "interested in the dispute" concerning rules and working conditions of the engineers' craft, the matter becomes one of craft interest to the firemen's craft enabling the Firemen's Committee to treat and contract with the Carrier at least equally with the Engineers' Committee concerning rules for the engineers' craft. Whether the interest of the members of the firemen's craft in engineers' craft rules be considered some sort of a firemen's craft interest or whether it be considered some sort of an engineers' craft minority interest (which are not conceded), in either case it is without legal significance in so far as the right of collective bargaining for the rules governing the engineers' craft is concerned. We submit that the only representative of the "employees interested in the dispute" which is authorized under the Railway Labor Act, as construed in the *Virginian R. Co.* case, to treat and contract with the carrier concerning the rules and working conditions governing a particular craft, is the representative chosen by the majority of that craft.

CONCLUSION.

The subject matter of the Mediation Agreement is rules governing the craft of locomotive engineers, as to which the Engineers' Committee has the exclusive right to bargain collectively with the Carrier. The Carrier was prohibited by the Railway Labor Act from treating or contracting concerning such matters with any craft representative except the Engineers' Committee. The Mediation Agreement, between the Carrier and the Firemen's Committee, therefore, was entered into in violation of the Railway Labor Act and is illegal and void.

This Court should reverse the judgment of the Circuit Court of Appeals for the Fifth Circuit, and render an appropriate declaratory decree in favor of the petitioner.

Respectfully submitted,

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APPENDIX A.

The Railway Labor Act, as amended (Act of May 20, 1926, c. 347, 44 Stat. 577, Act of June 21, 1934, c. 691, 48 Stat. 1185, Act of Aug. 13, 1940, c. 664 §§ 2, 3, 54 Stat. 785; U. S. C., Tit. 45, §§ 151-163).

(Sections 3 and 7-11, omitted.)

Definitions

Section 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such a railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying

of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its of their employees, to act for it or them.

Seventh. The terms "district court" includes the Supreme Court of the district of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

GENERAL PURPOSES

SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

General Duties

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, it officers or agents, shall deny or in any way question the right of its employees to

join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to

such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of it employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals

or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees

may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board," to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office for all successors shall expire three years after the expiration of the terms for which their predeces-

sors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and,

subject to the provisions of the civil service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [sic] such individual member of the Board or employee designated shall have power and authority to act as to any of

said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose officers are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the

said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing on both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however,

the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing,

stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing con-

tract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

APPENDIX B.

The Declaratory Judgments Act of June 14, 1934, c. 512, 48 Stat. 955, 28 U. S. C. § 400.

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

APPENDIX C.

The Norris-LaGuardia Act of Mar. 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. §§ 101-115.

SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless

of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held re-

sponsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is

sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury

of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of

"persons participating or interested" therein (as herein after defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved, March 23, 1932.